

EXHIBIT 4

Paul Hatch – October 21, 2022

Page 2

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TRANSCRIPT of the deposition of the
witness, called for Oral Examination in the
above-captioned matter, said deposition being taken by
and before CHARLENE FRIEDMAN, a Notary Public and
Certified Court Reporter of the State of New Jersey, a
Registered Professional Reporter, and a Certified
Realtime Reporter, via video teleconference, by Zoom, on
October 21, 2022, commencing at approximately 9:58 in
the morning, Eastern Standard Time.

Paul Hatch – October 21, 2022

Page 3

1 A P P E A R A N C E S:

2

3

4 TARTER, KRINSKY & DROGAN, LLP
1350 Broadway
5 New York, New York 10018
(212) 216-8000
6 BY: MARK BERKOWITZ, ESQ.
 CHANDLER STURM, ESQ.
7 Attorneys for Plaintiffs

8

9

10 GLACIER LAW, LLP
506 Second Avenue
11 Suite 1516
Seattle, Washington 98104
12 (206) 397-8633
BY: ROBIN CHENG, ESQ.
13 Attorneys for Defendant

14

15

16 ALSO PRESENT: YIYI LIU

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Paul Hatch – October 21, 2022

Page 4

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2
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9
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I N D E X

WITNESS NAME	PAGE
PAUL HATCH	
By Mr. Cheng	7

* * * * *

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE
Exhibit 1	Declaration	42
Exhibit 2	Declaration	44
Exhibit 3	Expert witness report	62
Exhibit 4	Rebuttal report	78
Exhibit 5	Exhibit to rebuttal	79
Exhibit 6	Report	81
Exhibit 7	U. S. D 737, 723 Patent	144

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Paul Hatch – October 21, 2022

Page 5

1

- - -

2

Deposition Support Index

3

- - -

4

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Direction to witness not to answer

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Page

Line

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None

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Request for production of documents

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Page

Line

11

None

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Questions marked

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Page

Line

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None

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Paul Hatch – October 21, 2022

Page 6

1 CERTIFIED SHORTHAND REPORTER: My
2 name is Charlene Friedman, a Certified
3 Shorthand Reporter and Notary Public of the
4 State of New Jersey. This deposition is
5 being held via videoconference equipment.

6 The witness and reporter are not in
7 the same room. The witness will be sworn in
8 remotely, pursuant to agreement of all
9 parties. The parties stipulate that the
10 testimony is being given as if the witness
11 was sworn in person.

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Paul Hatch – October 21, 2022

Page 7

1 P A U L H A T C H,

2 called as a witness, having been first duly
3 sworn according to law, testifies as follows:

4

5 EXAMINATION BY MR. CHENG:

6 Q Good morning, Mr. Hatch.

7 Thank you for attending this
8 deposition.

9 A Good morning.

10 Q My name is Robin Cheng, and I'll be
11 conducting this deposition. I'll be asking
12 questions related to the case in front of the
13 Northern District of Illinois, Case No.
14 120-cv-04806.

15 Are you familiar with that case?

16 A Yes, I am.

17 Q So is there any reason that you
18 could not testify honestly or confidently or
19 competently?

20 A No.

21 Q Did you take any drugs or
22 medication, or do you have any mental illness
23 that would prevent you from testifying
24 honestly?

25 A No.

Paul Hatch – October 21, 2022

Page 8

1 Q Okay. Mr. Hatch, how many expert
2 witness reports did you provide in this case?

3 A In this part of the case, I
4 provided one expert report, an initial report
5 plus two rebuttals.

6 I should also, if I may, point out,
7 I have printouts in front of me here, I just
8 want you to know now, that are unmarked of
9 all three documents.

10 Q All three documents?

11 A Yes.

12 Q Did you provide any other reports
13 in this case?

14 A Here in this case I provided
15 reports as well, and -- yes, that were of a
16 similar matter.

17 Q How many reports did you produce
18 previously before the three expert witness
19 reports that you just mentioned?

20 A There was a matching three that was
21 also an initial report and two rebuttal
22 reports, and those were provided in 2001.

23 Q Did you provide any reports in
24 response -- 2001, you said?

25 A I believe so, yes. That's 2001.

Paul Hatch – October 21, 2022

Page 9

1 Q 2001 was 20 years ago.

2 A Oh, I'm sorry. 2021.

3 Q 2021?

4 A Yes.

5 Q Did you provide any report in 2020?

6 A I don't think so. I think the
7 first reports were in '21.

8 Q Let's -- so first, I will ask you a
9 few questions regarding your, you know, past
10 experience.

11 So Mr. Hatch, where do you live?

12 A I live in Chicago.

13 Q In Chicago.

14 And what's your highest education?

15 A Currently, I'm doing a Ph.D., but
16 prior to that, I had a -- I studied
17 industrial design. That was my
18 undergraduate.

19 Q And from where?

20 A Northumbria University.

21 Q In which country?

22 A In the U.K.

23 Q In the U.K.

24 And how long did you study for
25 that?

Paul Hatch - October 21, 2022

Page 10

1 A That was -- it was -- well, I guess
2 five years. It was a four-year course, but I
3 took a one-year sabbatical.

4 Q And that is equivalent of a
5 Master's degree in the United States or --

6 A I'm sorry, no. It's an
7 undergraduate degree, a Bachelor's.

8 Q So that's a Bachelor's degree?

9 A Yes.

10 Q Did you -- after completing that
11 degree, did you pursue any further education?

12 A Not until my Ph.D.

13 Q And which Ph.D. program are you --
14 are you involved in?

15 A It's called Learning Sciences.

16 Q And which university?

17 A It's at the University of Illinois
18 at Chicago.

19 Q Have you passed your qualification
20 yet?

21 MR. BERKOWITZ: Objection to the
22 form.

23 A Do you mean in the Ph.D.?

24 Q For the Ph.D. program, yes.

25 A I'm halfway through the Ph.D. So

Paul Hatch – October 21, 2022

Page 11

1 I've passed several things so far.

2 Q That's great.

3 And before the Learning Science
4 program — is that the title of the Ph.D.
5 program or what does the program involve?

6 A Yes, that is the title. It's
7 called the Learning Sciences.

8 It's a multidisciplinary course
9 that is based on psychology, technology and
10 learning. So it's related to education.

11 Q It's related to education.

12 Is there any portion of the program
13 dedicated to industrial design?

14 A Not specifically.

15 Q And have you served as an expert
16 witness in similar cases before?

17 A Yes, I have.

18 Q How many?

19 A I have provided testimony. I think
20 it's 14, possibly 15 times.

21 Q How many cases did you provide —
22 in how many cases did you provide this 14 to
23 15 testimony?

24 A So, I think that would be 11 or 12
25 cases in which I've been deposed.

Paul Hatch - October 21, 2022

Page 12

1 Q Have you ever served as an expert
2 witness at trial?

3 A Yes, I have.

4 Q How many times?

5 A That would be three times. The
6 three trials included a Jams hearing, I think
7 it's called.

8 Q And within that 11 to 12 cases,
9 what type of cases or what type of products
10 do those cases involve?

11 A A number of consumer and commercial
12 manmade products, quite a range of things,
13 based on my experience as an industrial
14 designer.

15 Q Can you give me some examples?

16 A One was regarding some
17 microphones --

18 (Brief pause in proceedings.)

19 A One previous case that I provided
20 testimony for was regarding microphones,
21 which were Array microphones.

22 Q And you mentioned microphone Array?

23 A Array. It's a particular type of
24 microphone.

25 Q What other types of consumer

Paul Hatch – October 21, 2022

Page 13

1 electronic products have you -- have you
2 testified for?

3 A The -- there was a case regarding
4 power tools. I guess that falls in that
5 category as well.

6 Also, a case regarding personal
7 care equipment, hair shaving.

8 Q Anything related to electronic
9 vehicles or traditional conventional
10 vehicles?

11 A I've got experience working in that
12 area, but I think not testifying in
13 infringement in that area.

14 Q When you say that you have
15 experience working in that area, what
16 experience are you referring to?

17 A I worked as an industrial designer
18 at a consultancy for -- well, as an
19 industrial designer for over 25 years, mostly
20 at a consultancy.

21 During that time, I designed a lot
22 of consumer products, which included, for
23 instance, a Segway.

24 There was a certain type of Segway
25 that I think was related to this particular

Paul Hatch – October 21, 2022

Page 14

1 case.

2 Q I'm not familiar with Segway.

3 Can you tell me more about that
4 product, Segway?

5 A Yes, sure.

6 The Segway product came out at
7 around 2005, I think, approximately. And the
8 invention allowed us, like a hoverboard, to
9 stand on it and use it as a mobility device.

10 The Segways are different from the
11 hoverboard. It also has a stand going up to
12 a handlebar that the person could then hold,
13 but it used a very, very similar technology.

14 Q How many wheels did the Segway
15 have?

16 A Two wheels.

17 Q Two wheels.

18 And is there any connection portion
19 between the two wheels?

20 MR. BERKOWITZ: Objection to form.

21 A On the Segways, it did have a -- it
22 has the portion between the wheels, yes, that
23 the user would stand on.

24 Q That the user would stand on.

25 And did you design the industrial

Paul Hatch – October 21, 2022

Page 15

1 portion of that product or did you design --
2 what portion of that product did you focus
3 your design on?

4 A So the Segways were designed as
5 commercial products or personal vehicles
6 launched, I guess, before I started working
7 on the version I did.

8 And my company was requested to
9 design a version of that based on that
10 technology that would change the industrial
11 design, that is, the look and feel, the
12 styling towards a particular use and a
13 particular demographic.

14 Q And what would that demographic be?

15 A Without divulging any confidential
16 information, it was for a particular sport
17 that this would be used in and the
18 demographic being the people who do the
19 sport.

20 And it was seen that the Segway
21 would be a very good -- a very good
22 technology to use that. However, I would
23 need some certain changes to make it
24 appropriate for that particular application.

25 Q And for the eleven trial cases that

Paul Hatch - October 21, 2022

Page 16

1 you testified in, are they all design patent
2 infringement cases?

3 A They are infringement -- I'm sorry,
4 they are intellectual property cases
5 involving utility patents and design patents.

6 Q Were you involved in utility
7 patent -- so, how many of them involved
8 utility patents and how many of them involved
9 design patents?

10 A I don't know the numbers off the
11 top of my head, but I think half -- about
12 half or maybe slightly more than half
13 involved design patents.

14 Q And the -- sorry, go ahead.

15 A And the others involved utility
16 patents. Some involved both.

17 Q Some involved both.

18 So you're saying you're about five
19 to six cases that you -- where to which you
20 served as an expert witness involving design
21 patent issues?

22 A Approximately that number for how
23 many I have provided deposition for.

24 I've also worked on some other
25 design patent cases that I've only provided

Paul Hatch - October 21, 2022

Page 17

1 analysis and reports to support the
2 particular case, but it didn't necessarily go
3 to deposition.

4 Q And how many of those cases in
5 which that you served analysis but not
6 deposition?

7 A Off the top of my head, I'm not
8 sure. I would say a few, which would be
9 several, I guess. Three to five, maybe more.

10 Q Do you know the outcome of those
11 cases, the five to six cases of design patent
12 that you served as being deposed, that you
13 were deposed in those cases and the three to
14 five cases that you provided analysis but you
15 were not deposed in those cases?

16 MR. BERKOWITZ: Objection to the
17 form, vague, compound.

18 A I know that some of the cases,
19 certainly the majority of the cases I worked
20 on had a positive outcome. Maybe it was
21 settled before they went to court.

22 But I -- I haven't followed up to
23 know about how all of my cases ended.

24 Q Is there any case that your
25 analysis was -- are there any cases that your

Paul Hatch - October 21, 2022

Page 18

1 analysis was rejected by the court for the
2 infringement analysis?

3 MR. BERKOWITZ: Objection to form.

4 A I'm not very sure about what may
5 have happened with some of my testimony
6 after -- afterwards, but I -- I'm not aware
7 of, you know, a successful Daubert motion,
8 that is, for instance, I think I would be
9 aware if there was a successful Daubert
10 motion to block me as an expert witness.

11 Q I guess that's what I was asking.

12 What I meant is, was there any
13 analysis that you provided that eventually
14 was not -- was not -- let me rephrase it.

15 Is there any analysis to which you
16 provided your opinions were not -- were not
17 taken by the court, meaning the court sided
18 with the other party and considered, although
19 you provided your expert report, the position
20 is -- the positions were not taken by the
21 court?

22 MR. BERKOWITZ: Objection to form.

23 A Yeah, I don't entirely understand
24 the question, but I --

25 Q Let me -- let me rephrase it.

Paul Hatch - October 21, 2022

Page 19

1 If you provided your opinion, were
2 they all considered by the court?

3 MR. BERKOWITZ: Objection to form.

4 A I believe all of the reports that
5 I've provided were considered and I have not
6 had a report struck, if that's what your
7 question is.

8 Q And in those cases, did the court
9 all rule in your client's favor or did they
10 side with the other party?

11 MR. BERKOWITZ: Objection to the
12 form. Asked and answered.

13 You can answer.

14 A Just to clarify, when you say in
15 those cases --

16 Q In those cases you provided your
17 analysis and testified as witnesses.

18 MR. BERKOWITZ: Same objection.

19 A Yes, sorry.

20 Can you either repeat or rephrase
21 the question?

22 Q Sure.

23 In those cases that you provided
24 your analysis and you served as an expert
25 witness, did the court all rule in your

Paul Hatch - October 21, 2022

Page 20

1 client's favor or did they side with the
2 other party?

3 MR. BERKOWITZ: Objection to the
4 form. Asked and answered.

5 A I'm not sure. I know that in -- I
6 believe in the majority of the cases it has
7 ended up in the favor of -- or in my favor,
8 so to speak, but I really haven't kept track
9 of all the cases.

10 Q So when you say the majority of the
11 cases, the rest of the cases, do you know
12 that the court ruled against your client or
13 you just don't know about the outcome of the
14 cases?

15 A I believe there's one or two --
16 there's certainly one I know of that didn't
17 go in favor of my client, but there's
18 several -- I guess I really didn't keep tabs
19 on to know whether it went one way or the
20 other -- or another.

21 Q And for that one case that didn't
22 go in favor of your client, do you know the
23 case caption or the case number?

24 A Yes. Specifically, that's one that
25 went to trial.

Paul Hatch – October 21, 2022

Page 21

1 I don't know the case number, but I
2 do have it in my appendix.

3 The case is Clearone versus Shure.

4 Q Okay. Thank you.

5 Mr. Hatch, who approached you
6 initially regarding this case?

7 MR. BERKOWITZ: Objection to the
8 form.

9 Q Who approached you initially
10 regarding providing opinions in this case?

11 A In this part of the case, the
12 attorneys present contacted me.

13 Q Which portion are you referring to?

14 A I'm sorry, this year, the case that
15 we're looking at this year.

16 Q Oh, this year.

17 For the entire case, who approached
18 you and asked whether or not you can provide
19 your opinion in this case?

20 A I don't actually recall, but it
21 would very likely have been one of the
22 attorneys that were previously involved on
23 this case in 2021.

24 Q And you don't remember the name of
25 that attorney?

Paul Hatch - October 21, 2022

Page 22

1 A I don't right now, no.

2 Q Do you remember which law firm that
3 attorney worked for?

4 A Sorry. Off the top of my head, I
5 don't know. I've not worked with that law
6 firm before.

7 Q And have you worked with the named
8 plaintiffs or defendants before?

9 A Not before this case, no.

10 Q And after this case?

11 MR. BERKOWITZ: Objection to the
12 form. Calls for speculation.

13 A Do you mean have I worked with
14 them --

15 Q In other cases.

16 A In other cases since the start of
17 this case, is that what you mean?

18 Q Since the start of the case.

19 A No, I haven't. I only worked on
20 this particular case for that particular
21 client.

22 Q Do you know the name of the
23 plaintiffs in this case?

24 A Yes, I do.

25 Q Who are they?

Paul Hatch - October 21, 2022

Page 23

1 A You're referring to Hangzhou Chic,
2 H-A-N-G-Z-H-O-U, and Chic is C-H-I-C.

3 Q Is that the only party you're
4 working for in this case?

5 A There's -- I believe there are also
6 the company called Unicorn, Unicorn
7 technology.

8 No, I'm sorry, it's Unicorn Global,
9 who are also plaintiffs in this case.

10 Q And aside from this case, you have
11 not worked with them in other cases?

12 A I have not worked with Hangzhou
13 Chic and Unicorn outside of this case.

14 Q Mr. Hatch, what's your hourly rate
15 for doing work in this case?

16 A It's \$450.

17 Q Per hour?

18 A Per hour, yes. I believe that's in
19 my report.

20 Q Is that the amount that you usually
21 charge your clients?

22 A Yes, it is. It's a standard rate,
23 and it's always the -- you know, not
24 contingent upon the outcome of this case in
25 any way.

Paul Hatch - October 21, 2022

Page 24

1 Q And that's the same rate for
2 providing your analysis and attending
3 deposition?

4 A Yes. However -- actually, I'm not
5 sure if I have a different rate for
6 depositions specifically.

7 With some of my work I have a
8 slightly higher rate for deposition, which
9 may or may not be the case with this case.

10 Q Have you talked about your rate for
11 attending deposition in this case?

12 A I have -- it would have been agreed
13 when I started to work with the attorneys,
14 yes.

15 Q I'm sorry, I'm not quite
16 understanding you.

17 So you said for some work there may
18 or may not be a higher rate.

19 Are you charging a higher rate for
20 attending deposition in this case?

21 A I would have to check.

22 With some clients I do charge --
23 generally, I do charge a higher rate for
24 deposition and trial, and that depends upon
25 the agreement, that particular agreement that

Paul Hatch – October 21, 2022

Page 25

1 has been made with the attorney.

2 Q Has there been an agreement made
3 with an attorney?

4 A There has, and I would have to
5 double check what that is. It's -- likely,
6 it's slightly higher for a deposition.

7 Q How many hours have you spent --
8 have you spent preparing and drafting your
9 declarations in this case?

10 MR. BERKOWITZ: Objection to form.

11 A Last year there was a lot of
12 analysis of a lot of different hoverboards
13 outside of the hoverboards that are in this
14 case.

15 There were a significant number of
16 hours involved in that part of the analysis.

17 This year I created three reports
18 and also conducted an analysis on five
19 hoverboards, but more specifically, the
20 current defendants, and therefore, there was
21 less time.

22 It's hard to estimate the hours,
23 but this year may be somewhere in 80 to 150
24 in that work.

25 Q Can you tell us about TEAMS Design

Paul Hatch - October 21, 2022

Page 26

1 USA?

2 A Sure, yes.

3 It's a design consultancy that I --
4 I founded the Chicago branch of in 1998 and
5 continued to -- to lead up until two years
6 ago.

7 Q What happened two years ago?

8 A I decided to -- to do my Ph.D., and
9 it's a full-time program and I dedicated
10 myself towards that.

11 Q Are you still with TEAMS Design
12 USA?

13 A I'm not. I am, however, on the
14 board and have partial ownership still.

15 Q Is that a -- what is the formality
16 of this company; is that a partnership or is
17 it a limited corporation or is it an
18 incorporated business?

19 A It's a -- I believe it's called a C
20 Corp. So it's not -- it's not public, if
21 that's what you mean. It's privately held.

22 Q And when you're saying the Chicago
23 branch, what's the headquarter of this
24 organization? Where's the headquarters?

25 A The headquarters is in Germany, and

Paul Hatch – October 21, 2022

Page 27

1 they were founded in 1956.

2 Q When you were working there, how
3 many staff employees did you supervise?

4 A It ranged through the years. At
5 the very start, I just had one employee and
6 we went up to about 28, I believe, and as an
7 average, usually around 15 to 20, I guess.

8 Q Do you know any person who worked
9 for plaintiff, Hangzhou Chic, at Intelligent
10 Technology Corporation?

11 MR. BERKOWITZ: Objection to the
12 form.

13 A I don't personally know them, any
14 person that works there, no.

15 Q Have you talked with anyone who
16 worked for them -- not them, for it, just one
17 company?

18 MR. BERKOWITZ: Objection to form.

19 A I've not spoken directly with
20 someone who works with Hangzhou Chic.

21 Q Do you know any person who works
22 for Unicorn Global, Inc.?

23 A I don't personally know anyone who
24 works for Unicorn Global, Inc.

25 Q Have you talked to anyone who works

Paul Hatch - October 21, 2022

Page 28

1 for Unicorn -- who works at Unicorn Global,
2 Inc.?

3 A I've not spoken with anyone who
4 works at Unicorn Global, Inc.

5 Q Do you know the person named Jing
6 Cui?

7 And I'll spell that for you.
8 J-I-N-G, and C-U-I, last name.

9 MR. BERKOWITZ: Objection to the
10 form.

11 A I don't know personally that
12 person.

13 Q Have you seen any documents drafted
14 by this person?

15 MR. BERKOWITZ: Objection to the
16 form.

17 A I'm sorry, who is the person, a
18 manager of one of the companies?

19 Q They are the accolades with the
20 company, yes.

21 A I don't think I've seen any
22 documents drafted by them.

23 Q Have you seen any reports submitted
24 by them in court?

25 MR. BERKOWITZ: Objection to the

Paul Hatch - October 21, 2022

Page 29

1 form.

2 MR. CHENG: Can you be more
3 specific so I understand your objections
4 better?

5 MR. BERKOWITZ: Sure.

6 It's outside the scope. It's
7 unclear who you're referring to, what reports
8 you're referring to. It's unclear what court
9 you're referring to --

10 MR. CHENG: I will be more
11 specific.

12 MR. BERKOWITZ: -- or when.

13 Q Mr. Hatch, do you know if Jing Cui
14 submitted any declarations in this case?

15 MR. BERKOWITZ: Objection to the
16 form. Asked and answered.

17 A I'm not aware of reading any of
18 those -- any of those declarations.

19 Q Do you know a person with the name
20 of Yia Wei Ying, Y-I-A, W-E-I, first name and
21 last name is Y-I-N-G.

22 A No, I'm not familiar with that name
23 right now.

24 Q Do you know whether or not this
25 person submitted any declarations in this --

Paul Hatch - October 21, 2022

Page 30

1 in this case?

2 A I'm not familiar with this person's
3 declarations.

4 Q Do you know a person with the name
5 Arthur Yuan, Y-U-A-N?

6 A Is Arthur an attorney?

7 Q I ask questions here.

8 A Oh, I'm sorry.

9 I believe there was an Arthur who
10 was an attorney on the case last year, but
11 again, I'm -- I'm not sure.

12 Q And do you know if Arthur Yuan ever
13 submitted any declarations in this case?

14 A If he was the attorney on my
15 client's side, the only declarations that I
16 know of are the declarations that I wrote.

17 Q I'm sorry, can you -- can you
18 repeat your answer? I don't think I quite
19 got it.

20 A I'm not sure if -- if Arthur is the
21 attorney.

22 Q Arthur is the attorney with a firm
23 Loeb & Loeb.

24 A Okay, great.

25 So I'm not familiar with

Paul Hatch - October 21, 2022

Page 31

1 declarations that they submitted other than
2 my declarations.

3 Q You don't know whether or not he
4 submitted declarations in this case?

5 A I -- I believe they -- they did
6 submit opinions to this case. I'm fairly
7 sure of that.

8 I only provided my declarations.
9 I'm only aware of the declarations that I
10 provided.

11 Q Did you read any of his
12 declarations?

13 MR. BERKOWITZ: Objection to the
14 form. Asked and answered multiple times.

15 A I'm sorry, can you repeat it?

16 Q Did you read any of his
17 declarations?

18 A Any of what declarations?

19 Q Any of Arthur Yuan's declarations
20 submitted in this case.

21 A No, I -- the only declarations I'm
22 aware of submitted from our side were from
23 me, that I know of.

24 Q Do you have any financial interest
25 depending on the outcome of this case?

Paul Hatch - October 21, 2022

Page 32

1 A I believe I have answered that
2 already, but no, the outcome does not affect
3 my -- anything financially for me.

4 Q Did you actually solicitate
5 business from either the firm Loeb & Loeb or
6 from the client?

7 MR. BERKOWITZ: Objection to form.

8 A No, I was approached by them. I
9 would not have approached them about this
10 case.

11 Q Do you know if TEAMS Design USA
12 actively advertised their business and
13 solicitute business from the law firm of Loeb
14 & Loeb or from the plaintiffs in this case?

15 A No, TEAMS doesn't directly
16 solicitute business from them beyond having a
17 website, but it is not directed at those
18 companies.

19 Q Do you use any agent, advertising
20 companies, online platforms, to advertise
21 their business?

22 A There -- there is a marketing group
23 that does look after social media posts, but
24 they don't do cold calling or direct calling
25 on potential clients.

Paul Hatch - October 21, 2022

Page 33

1 Q Out of the declarations and the --
2 out of the declarations you submitted in this
3 case and the expert witness report and the
4 rebuttal report you provided, did you
5 prepare -- did you prepare those documents by
6 yourself or with the assistance of another
7 party?

8 A I did a high majority of the work,
9 certainly all the analysis and the writing,
10 and I conferred with the attorneys for their
11 opinion, or rather, you know, on grammatical
12 errors and things like that.

13 So there was some help, but the
14 high majority of the opinions are all mine.

15 Q What documents did you review to
16 complete the declarations that you provided
17 before you -- before you provided the expert
18 witness reports?

19 MR. BERKOWITZ: Objection to the
20 form.

21 A I believe I've -- I've documented
22 that in Appendix C.

23 I reviewed the -- you're asking
24 which documents I reviewed.

25 I reviewed the patents and the --

Paul Hatch - October 21, 2022

Page 34

1 in this case, and the file histories, but I
2 also reviewed the accused products
3 themselves.

4 Q By "accused products," what
5 products were you referring to?

6 A The -- you know, more specifically
7 in the infringement report this year, my
8 focus was to look at the accused products
9 that I have termed Gyroor A through E.

10 Q Okay. So you're referring to the
11 expert witness report you provided this year.

12 Did you review -- are those the
13 only products that you reviewed in this case?

14 MR. BERKOWITZ: Objection to the
15 form.

16 A In the previous part of this case,
17 there were a lot more accused products. So
18 I -- I reviewed, as I mentioned before, a lot
19 more products last year.

20 Q How many products did you review?

21 A I'm not sure of the number. There
22 were very many.

23 I probably reviewed 10 or 12
24 physical products in person and maybe just as
25 many through other detailed information that

Paul Hatch – October 21, 2022

Page 35

1 was outside of the Gyroor products.

2 Q By other detailed information, do
3 you mean photos?

4 A Yes. Outside of the Gyroor
5 products, there were products that were not
6 obtainable by the counsel last year and so
7 I -- I reviewed them via photos of different
8 angles of those products, but the Gyroor
9 products in this case I've reviewed in
10 person.

11 Q Who provided the products to you?

12 A I -- I believe one of them I did
13 purchase myself online, but the other Gyroor
14 products were provided to me on my request by
15 the previous counsel.

16 Q Aside from the Gyroor products, did
17 you review any other accused products in
18 person or did you obtain any other -- did you
19 obtain any other accused products in their
20 physical form?

21 MR. BERKOWITZ: Objection to form.
22 Outside the scope of the reports.

23 A I -- I did review some other
24 products that were not manufactured or I
25 believe they were not manufactured by Gyroor

Paul Hatch – October 21, 2022

Page 36

1 in person last year, yes.

2 Q And for those products that you did
3 not receive a physical form, how did you
4 compare the products with -- with the
5 patents?

6 MR. BERKOWITZ: Objection to form.
7 Outside the scope.

8 A In some of the products where I or
9 all the attorneys were not able to get
10 physical products, partly because they had
11 been pulled off of the market, they provided
12 me with substantial photos of them and that's
13 what I used for my analysis, but that was
14 only for non-Gyroor products.

15 Q Do you think the substantial photos
16 are sufficient for you to form your opinion?

17 MR. BERKOWITZ: Objection to form.
18 Calls for speculation.

19 A I think in that particular case for
20 those non-Gyroor products, I was able to
21 provide some opinion based on the limited
22 information that I could get from the photos,
23 but I also acknowledge that I would need to
24 examine the physical product to finish that
25 analysis.

Paul Hatch - October 21, 2022

Page 37

1 However, the Gyroor products, I --
2 I had in person.

3 Q Is there a substantial difference
4 between the Gyroor products and the
5 non-Gyroor products?

6 MR. BERKOWITZ: Objection to form.
7 Calls for speculation.

8 A That was not necessarily part of my
9 analysis. That is, I wasn't comparing the
10 Gyroor products to the non-Gyroor products,
11 however, the Gyroor products I did have in
12 person and some of the non-Gyroor I didn't.

13 Q For the non-Gyroor products that
14 you did not obtain, the product that you only
15 viewed the photos, did you conclude that they
16 were infringing or do you think they were not
17 infringing products?

18 MR. BERKOWITZ: Objection to the
19 form. Outside the scope.

20 I just caution the witness to the
21 extent this is not a -- not referring to a
22 report that was issued. Just be aware of
23 that. It could be privileged communications
24 that you shouldn't disclose.

25 MR. CHENG: I'm not soliciting

Paul Hatch – October 21, 2022

Page 38

1 any privileged information.

2 If there's any question related to
3 any privilege, please assert it clearly so I
4 know that question should be avoided.

5 However, if it's not privileged
6 information, I'm free to ask.

7 MR. BERKOWITZ: Sure. So I'm
8 cautioning the witness.

9 MR. CHENG: Okay.

10 MR. BERKOWITZ: I don't fully
11 understand the question, so it's hard to give
12 a precise instruction.

13 I'm telling the witness to the
14 extent that his answer may reveal privileged
15 communications, you be aware of that.

16 Go ahead.

17 A For clarification, can you repeat
18 the question?

19 Q Of course.

20 You mentioned -- so let's do this
21 step by step.

22 A Yes.

23 Q For some of the products that you
24 reviewed, you did not review the physical
25 product?

Paul Hatch – October 21, 2022

Page 39

1 A For some of the non-Gyroor
2 products, I was unable to examine the
3 physical product which would have been
4 optimal.

5 Q Did you form -- and for those
6 products you only examined the image or the
7 photos provided to you?

8 A For those specific non -- for a few
9 of the non-Gyroor products, I was only able
10 to analyze some photos.

11 Q And after analyzing those photos,
12 did you form your opinion as to the
13 infringement nature of those products?

14 MR. BERKOWITZ: Objection to form.

15 A I was -- after analysis of the
16 non-Gyroor products, I was able to provide an
17 opinion on that basis, on the limited
18 information that I had, but also requested to
19 have the physical product for a more thorough
20 analysis.

21 Q Did you ever receive what you
22 requested?

23 MR. BERKOWITZ: Objection to form.
24 Calls for speculation.

25 A I did request a number of

Paul Hatch – October 21, 2022

Page 40

1 hoverboards that I didn't originally have,
2 non-Gyroor hoverboards, and did eventually
3 receive some that helped my analysis, yes.

4 Q But not all of those non-Gyroor
5 products?

6 MR. BERKOWITZ: Objection to form.
7 Mischaracterizes testimony.

8 A Some of the non-Gyroor products
9 last year had been pulled from the market and
10 the attorneys and myself were unable to get a
11 hold of physical samples.

12 Q Did you provide any opinion on
13 those products that you did not receive?

14 A I did provide --

15 MR. BERKOWITZ: Objection.

16 Just note my objection to the form.
17 It's been asked and answered multiple times.

18 You can answer.

19 A For the non-Gyroor products that
20 I -- I didn't have a physical product on, I
21 did provide analysis and also opinions, but
22 also asked for further physical products so
23 that I could create a more detailed analysis.

24 Q That's not the question I asked.

25 And I will repeat my question, and

Paul Hatch – October 21, 2022

Page 41

1 I want you to answer specifically to the
2 question I asked.

3 For the products, you never
4 received a physical product, for the accused
5 products that you never received the physical
6 products, did you provide your opinions on
7 those products?

8 MR. BERKOWITZ: Objection to form.
9 Asked and answered.

10 A I did provide an opinion, also an
11 initial analysis as detailed in my
12 declaration and made it clear that a better,
13 more detailed analysis would be through a
14 physical product.

15 I hope that answers your question.

16 Q How many patents -- how many design
17 patents did you review?

18 A I reviewed the four patents and
19 their file histories, the ones that are
20 relevant for this case, and I believe last
21 year I also reviewed -- I would have to
22 check.

23 I think there was a utility patent
24 that I reviewed but I did not base my
25 opinions on.

Paul Hatch – October 21, 2022

Page 42

1 MR. CHENG: Ms. Court Reporter, can
2 we take a break? Ten minutes.

3 (Brief recess taken.)

4 Q Let me introduce into evidence --
5 let me introduce Exhibit 1, and I will share
6 that with everyone in the chat.

7 (Above-mentioned document marked
8 for Identification.)

9 Q Mr. Hatch, can you download this
10 file or do you want me to share that with
11 you?

12 A I've downloaded it and I can view
13 it. Thank you.

14 Q Okay. You previously mentioned
15 that you provided declarations in this case,
16 starting in 2021.

17 Do you recognize this document?

18 A I do, yes.

19 And thinking of the timing of this,
20 this might even be 2020 when I started in
21 this case. It's all COVID years, but yes, I
22 do recognize this document.

23 Q So do you recognize this document
24 was provided by you?

25 A Yes. And I'm sorry, I don't know.

Paul Hatch – October 21, 2022

Page 43

1 I think it might be at the end of 2020, but
2 yes, this is from me.

3 Q Meaning the last page has your
4 signature.

5 Can you confirm that you signed
6 that document?

7 A Yes. I see the date as well. It
8 is the end of 2020.

9 Q So you did provide expert
10 declarations in the year of 2020?

11 A Yes, I believe so.

12 Q Okay.

13 A And I think when I was referring to
14 2021 and whether there were non-Gyroor
15 products, that was at around this time, which
16 was the end of 2020.

17 Q So you're saying this declaration
18 does not implicate Gyroor products?

19 MR. BERKOWITZ: Objection to the
20 form.

21 A That's not what I said, no.

22 Q I'm sorry, what did you say?

23 A That this declaration written at
24 the time, towards the end of 2020, included
25 some non-Gyroor products.

Paul Hatch - October 21, 2022

Page 44

1 Q Included non-Gyroor products?

2 A Yes.

3 Q I see.

4 MR. CHENG: I'm going to introduce
5 to you in the chat the second document, which
6 is marked as Exhibit No. 2.

7 (Above-mentioned document marked
8 for Identification.)

9 MR. CHENG: Can you all see this
10 document?

11 MR. BERKOWITZ: I downloaded it.

12 Paul, have you been able to
13 download it?

14 THE WITNESS: Yes, and I've opened
15 it.

16 MR. BERKOWITZ: Okay.

17 Q Mr. Hatch, do you recognize this
18 document?

19 A I do, yes.

20 Q And can you confirm that the
21 document was prepared and signed by you?

22 A Yes, it is signed by me. I believe
23 the case number is different from the current
24 case here.

25 Q Exactly. That's what I'm trying to

Paul Hatch – October 21, 2022

Page 45

1 understand.

2 You said you have not worked with
3 plaintiffs in other cases aside from the
4 current case that you're being deposed for.

5 Did you prepare this document?

6 MR. BERKOWITZ: Objection to the
7 form.

8 A I did provide -- prepare this
9 document, yes, and I see this is probably the
10 same or very similar to the other document
11 that I also prepared, Exhibit 1, but I also
12 see the case number is different.

13 I was not aware that there were two
14 different case numbers for this case.

15 Q Did you authorize your report to be
16 used in this case?

17 MR. BERKOWITZ: Objection to the
18 form.

19 A I did authorize the attorneys to
20 use my document. I was not aware that this
21 would be a separate case because it involves
22 the same material.

23 Q I don't know if it involved the
24 same material.

25 What I'm trying to understand is,

Paul Hatch – October 21, 2022

Page 46

1 if this report is prepared by you, then you
2 should have known that your opinions provided
3 in the case 20-cv-05905 is this document
4 prepared by you.

5 MR. BERKOWITZ: Objection to the
6 form. Argumentative. Asked and answered.

7 A This document is provided by me,
8 but I was not aware of the time that -- at
9 the time that this may be used in a different
10 case, but it -- it's regarding the -- the
11 same material.

12 Q On the first page of Exhibit No. 2,
13 there is a case number, which is 20-cv-05905.

14 Can you see that case number?

15 A Yes, I do see that. Yes.

16 Q Did you put in the case number on
17 the first page?

18 MR. BERKOWITZ: Objection to the
19 form.

20 A I'm not sure if I actually put that
21 case number or if possibly the attorneys had
22 corrected what I had there before.

23 Q So it's possible that the attorney
24 used your report and changed the case number?

25 MR. BERKOWITZ: Objection to the

Paul Hatch - October 21, 2022

Page 47

1 form.

2 A It's possible that they did minor
3 edits like that and, obviously, I would have
4 trusted them with a case number. It's not
5 something I would have known about.

6 Q Did you sign for this document?

7 A I believe you've asked that, but
8 yes, I did sign this document and I did write
9 this document. This is my analysis.

10 Q And do you know what your analysis
11 was used for in the case 05905?

12 MR. BERKOWITZ: Objection to form.

13 A I see now, obviously, that it has a
14 different case number, but the -- my opinions
15 is what counted here and I -- I knew those --
16 how those were being used.

17 I was not aware that it had a
18 different case number, though.

19 Q But you did provide this report
20 separately or it's just one report being used
21 in different cases?

22 MR. BERKOWITZ: Objection to form.

23 A No, I did provide this separately.
24 It was -- for me, it was part of the
25 continuing -- continuing analysis of the very

Paul Hatch - October 21, 2022

Page 48

1 many infringing products.

2 Q Do you know what are the accused
3 products in the case 05905?

4 MR. BERKOWITZ: Objection to form.
5 Outside the scope.

6 A This is obviously, as you've
7 explained, a case outside of this case, but
8 the report does show the accused products in
9 this case, yes. There are very many.

10 Q And do you remember when this
11 report was executed or signed by you?

12 A I do see the date is included
13 there, which I don't question. It -- it was
14 filed on November the 30th, 2020.

15 Q So you've worked with plaintiffs in
16 multiple cases?

17 A I -- at the time I was under the
18 impression this was the same case, but I see
19 it has a different case number now, but my
20 analysis and my opinions were, as we can see,
21 the same and consistent.

22 Q Have you worked with plaintiffs in
23 any other cases?

24 A I am not aware of any cases outside
25 of these ones we're looking at that I worked

Paul Hatch - October 21, 2022

Page 49

1 with them on.

2 Q Back to Exhibit No. 1, and if you
3 can take a look at page number 21. and
4 there's a Table 8, "Accused Products of
5 Species I."

6 Can you see that table?

7 A Yes, I see this table.

8 Q And there are nine pictures on this
9 page and the bottom metal picture is a
10 hoverboard with the name or the brand name
11 SYLUS, S-Y-L-U-S.

12 Can you see that one?

13 A Yes, I see that one.

14 Q Did you receive a physical product
15 of this SYLUS hoverboard?

16 MR. BERKOWITZ: Objection to form.
17 Outside the scope.

18 A I'm not sure. I think it's quite
19 possible for this particular one. You see
20 this is one of very many and obviously it
21 looks very familiar.

22 Q Okay. and your declaration, Exhibit
23 1, the picture of the SYLUS hoverboard was
24 used as evidence to prove its infringing
25 product?

Paul Hatch – October 21, 2022

Page 50

1 MR. BERKOWITZ: Objection to form.
2 Mischaracterizes documents.

3 A This particular hoverboard was one
4 of very many that I analyzed and did conclude
5 they were substantially the same in the eyes
6 of the ordinary observer to the infringed
7 patent.

8 Q Aside from the picture included
9 here, did you review any other image or the
10 physical products related to this SYLUS
11 hoverboard?

12 MR. BERKOWITZ: Objection to form.
13 Outside the scope.

14 A It's very likely that I looked at
15 other views of this particular product, one
16 of many here, and I think I may have seen the
17 physical product for this one as well.

18 It's obviously very familiar
19 because it's — it's the same shape and form
20 or very similar shape and form to many of the
21 hoverboards here.

22 Q Aside from this perspective view of
23 the SYLUS hoverboard, did you include any
24 other images for this SYLUS hoverboard in
25 this report?

Paul Hatch – October 21, 2022

Page 51

1 A In this particular report, I
2 believe I only show one of the images in one
3 particular view, but my analysis was -- was
4 broader.

5 Q Did you view other images in other
6 reports but you only particularly mentioned
7 this particular report?

8 MR. BERKOWITZ: Objection to the
9 form.

10 A I don't know, for instance, if in
11 that other case that you brought forward, if
12 it was included there. I may have included a
13 different view. It's possible, but certainly
14 my analysis beyond just looking at one
15 particular view.

16 Q Even though there's only one view
17 included in this report?

18 MR. BERKOWITZ: Is there a
19 question?

20 MR. CHENG: Yes.

21 Q So based on this report, based on
22 this one image, you conclude that, according
23 to your report, this product is infringing on
24 the patent in suit?

25 MR. BERKOWITZ: Objection to form.

Paul Hatch - October 21, 2022

Page 52

1 Mischaracterizes testimony.

2 A No, that's not what I said.

3 I've only -- in this particular
4 report, I've only included this one view.

5 Because there are so many similar
6 infringing images for the conciseness of this
7 report, I only showed one image; however,
8 there were very many other views and other
9 images that I analyzed among these products
10 as well as analyzed physical products.

11 Q And why did you not include other
12 views in this report?

13 A They -- the -- for the conciseness
14 of the report itself, to report the opinion,
15 it was not necessary to show all of the views
16 of all of the products because there were, in
17 this case, so very many. However, later
18 reports where I was analyzing just four or
19 five products, I -- I did then provide more
20 images.

21 Q When you say -- when you said not
22 necessary, do you think this one image is
23 sufficient to prove that this is an
24 infringing product?

25 MR. BERKOWITZ: Objection to the

Paul Hatch – October 21, 2022

Page 53

1 form. Asked and answered multiple times.

2 A This image only -- does not provide
3 all of the evidence of the analysis
4 necessary. This image represents one product
5 just for this report. The analysis was done
6 on very many images and physical products.

7 Q So based on this one image, it's
8 not conclusive this product is infringing?
9 Without other images, this conclusion is
10 insufficient from this one image?

11 MR. BERKOWITZ: Objection to form.
12 Mischaracterizes testimony.

13 A That's not what I'm saying, but
14 what I'm saying is, I've included one view as
15 part of this document. However, the analysis
16 of the infringement itself was done using
17 many years.

18 Q If the views are not included in
19 this report, how can we conclude that you
20 actually viewed other angles of this product?

21 A I believe it would be stated in the
22 report that I analyzed many views and
23 physical products as part of my analysis.

24 Q So although the images were not
25 included, your words that you viewed other

Paul Hatch – October 21, 2022

Page 54

1 images to be sufficient to conclude that the
2 products is infringing?

3 A The report is a reflection of my
4 analysis and it is the -- the aim of the
5 report is not to provide every possible piece
6 of evidence, but to provide my opinion, based
7 upon an analysis of the evidence and
8 therefore, that's what it does.

9 Q And in preparing this document --
10 in preparing this declaration marked as
11 Exhibit 1, what documents did you review?

12 A I reviewed the relevant patents,
13 filing histories, very many images of the
14 accused products and a number of physical
15 products as part of the analysis to prepare
16 this document.

17 Q And do you know what this document
18 was used for?

19 MR. BERKOWITZ: Objection to form.

20 A I'm sorry, what do you mean?

21 Q What document was used to support?

22 MR. BERKOWITZ: Same objection to
23 form.

24 A The -- my analysis of this
25 document -- my declaration provided my

Paul Hatch - October 21, 2022

Page 55

1 opinion on this case and it was used in this
2 case.

3 Q To support a motion?

4 A That is correct. I -- I stated
5 that I think in the -- yes, in the opening
6 paragraph, that this declaration is in
7 support of a preliminary injunction that was
8 going on at the time.

9 Q Did you review the motion for
10 preliminary injunction?

11 A I'm not sure. I don't think I -- I
12 don't think I did at the time. I was focused
13 on my own report. I don't think I saw
14 information like that.

15 Q And who provided you with a list of
16 accused products?

17 MR. BERKOWITZ: Objection to the
18 form.

19 A The attorneys, the counsel at the
20 time would have provided me with a list of
21 the potentially infringing reports when they
22 asked for my opinion on them.

23 Q Do you know how many potential
24 infringing products were identified?

25 MR. BERKOWITZ: Objection to the

Paul Hatch - October 21, 2022

Page 56

1 form. Outside the scope.

2 A In -- in this particular report,
3 there were very many that were part of the
4 analysis. I'm not aware of the exact number.

5 Q Were there any products identified
6 that -- identified by the attorney as
7 potentially infringing but deemed as not
8 infringing by you?

9 MR. BERKOWITZ: So I would
10 instruct -- to the extent -- I would instruct
11 the witness not to answer on the grounds of
12 privilege.

13 A Yeah, I believe I did have
14 discussions with the attorney --

15 MR. BERKOWITZ: Just to be clear,
16 I'm instructing you --

17 THE WITNESS: Okay.

18 MR. BERKOWITZ: -- again, at this
19 point, to the extent it involves
20 attorney-client communication, I'm
21 instructing you not to answer.

22 THE WITNESS: Okay, yep.

23 MR. BERKOWITZ: Just to be clear,
24 if you can answer without revealing any
25 privileged communications or work product,

Paul Hatch - October 21, 2022

Page 57

1 you can do so.

2 But to the extent that it involves
3 any communications with your attorney and
4 anything else outside the scope of this
5 declaration report, I instruct you not to
6 answer.

7 THE WITNESS: Okay, good. I was
8 kind of going there.

9 A But yes, we had conversations and,
10 obviously, you know, this -- I would not have
11 provided an opinion on something infringing
12 if I didn't believe it was infringing.

13 Q Mr. Hatch, are you familiar with
14 the patents-in-suit -- and when I use the
15 term "patents-in-suit," do you know what
16 patents I'm referring to?

17 A I believe you're referring to the
18 four patents that I referred to in my
19 declaration this year. I also refer to them
20 as the patents-in-suit.

21 Q Are you familiar with those four
22 patents?

23 A Yes, I am familiar with those four
24 patents.

25 Q Are you familiar with all the prior

Paul Hatch – October 21, 2022

Page 58

1 art referenced in those four patents?

2 A I did gain familiarity by looking
3 at the prior arts that is referenced in those
4 four patents.

5 Q Are there any prior arts that you
6 think should be viewed for infringement or
7 not infringement analysis in this case?

8 MR. BERKOWITZ: I'm sorry, I didn't
9 hear the first part of your question.

10 MR. CHENG: Ms. Reporter, if you
11 got it, can you read it back.

12 (Whereupon, the record was read
13 back by the reporter.)

14 MR. BERKOWITZ: Objection to the
15 form.

16 A Yes. I'm not sure of your
17 question, but my initial analysis was of the
18 prior art that was — that was listed on the
19 patents themselves, which is the normal
20 approach for the initial analysis, pending
21 the defendant, bringing any additional prior
22 art that they may think is relevant.

23 Q Did you search for other prior
24 art — did you search for additional prior
25 art other than the ones referenced in the

Paul Hatch - October 21, 2022

Page 59

1 patents-in-suit?

2 A At the start of this analysis, no.
3 I focused on the prior art that was listed on
4 the four patents.

5 Q Are you familiar with patent -- the
6 design patent number -- the design Patent No.
7 US D739,906?

8 A Yes, I am familiar with that.

9 Q Is that -- is that a prior art to
10 the four patents-in-suit?

11 MR. BERKOWITZ: Objection to the
12 form.

13 A It is listed on two of the patents
14 as being prior art and was, therefore, part
15 of my analysis.

16 Q Is this, in your opinion, a prior
17 art for all four patents-in-suit?

18 MR. BERKOWITZ: Objection to form.

19 A I believe its filing date was early
20 enough to be part of the consideration. I'm
21 not sure if there are other things that
22 impede it from it being considered prior art,
23 however, it was a part of my analysis.

24 Q Do you know the definition of prior
25 art?

Paul Hatch – October 21, 2022

Page 60

1 A I have an understanding of prior
2 art, yes.

3 Q Did you consider this 739,906
4 patent -- and we'll refer to this one as the
5 '906 patent.

6 Did you consider this '906 patent
7 only for analysis regarding two -- two of the
8 patents-in-suit or for all four
9 patents-in-suit?

10 A In my analysis, I provided a full
11 comparison of the '906 to all four patents,
12 which I provided in detail.

13 Q Mr. Hatch, do you understand the
14 legal standard for design patent infringement
15 analysis?

16 A I have an understanding enough to
17 be able to create an analysis. I'm not a
18 lawyer, but I do rely upon my understanding
19 of the law in my analysis.

20 Q And can you tell us, what's your
21 understanding of the law?

22 A I think my report says it probably
23 most succinctly. I did provide some summary
24 there and obviously there are many aspects to
25 the law.

Paul Hatch - October 21, 2022

Page 61

1 If you have something quite
2 specific, I can attempt to answer it.

3 Q I'd like to understand your
4 understanding regarding the legal standard
5 applied by you for your report.

6 MR. BERKOWITZ: Objection to form.
7 Asked and answered.

8 A There's just a number of --

9 Q In short, you have to answer the
10 questions instead of directing me to a
11 document.

12 MR. BERKOWITZ: No, I disagree with
13 that statement.

14 He answered your question.

15 MR. CHENG: No. He referred me to
16 a document. That's not what I asked for.

17 MR. BERKOWITZ: I disagree with
18 you.

19 The witness should answer the
20 question however he feels is appropriate.

21 Continue.

22 A I have included an outline in my
23 report of the legal standards that help me in
24 doing this analysis and I've relied upon my
25 understanding of them.

Paul Hatch - October 21, 2022

Page 62

1 It's not one standard. There are
2 legal standards that are -- that I presented
3 there.

4 Q Did you do the search yourself or
5 the legal standards was provided to you?

6 MR. BERKOWITZ: Objection to the
7 form.

8 A The attorneys -- are you referring
9 to the --

10 Q I'm referring to Section 2, "Legal
11 Standards," in your expert witness report.

12 A Of 2022?

13 Q Of 2022.

14 MR. CHENG: Let me mark that as
15 Exhibit 3, and I will drop that in the chat
16 so we know we're clear.

17 MR. BERKOWITZ: Thank you.

18 (Above-mentioned document marked
19 for Identification.)

20 A Yes, I wanted to refer to an
21 exhibit, and I realized there wasn't one.

22 Q So this is Exhibit No. 3, and I'm
23 putting that in the chat.

24 A Okay, I have it in front of me.

25 Q If you can take a look at Section

Paul Hatch – October 21, 2022

Page 63

1 2, "Legal Standards," which is on page 3.

2 And as you can see, your case is
3 cited in subsections related to the Legal
4 Standards.

5 Is that correct?

6 A That's correct, yes. It stretches
7 until page 6, yes.

8 Q Did you search for the cases
9 yourself?

10 A Some, if not a lot, of this
11 language would have -- I would have used in
12 previous cases that I've been involved in,
13 and so I think a lot of this came from me and
14 at some point the past, either from
15 information I was provided by attorneys or
16 information that I searched myself.

17 Q And which attorney provided you
18 assistance?

19 MR. BERKOWITZ: Objection to the
20 form.

21 A So for this document, I believe the
22 majority of this I had already -- I provided,
23 I put in here and I sourced it from the
24 previous two that I worked on.

25 It's also customary for me to ask

Paul Hatch - October 21, 2022

Page 64

1 the attorneys that I'm working for to check
2 and to correct anything that I may have
3 misstated here.

4 Q Which attorney did you ask to check
5 this section?

6 A I would have asked the -- the
7 current attorneys, such as Mark, to check
8 over this section.

9 Q Did they give you any feedback on
10 this section?

11 MR. BERKOWITZ: Objection.

12 And I instruct the witness not to
13 answer.

14 A We spoke about it. I obviously
15 can't divulge exactly what we said.

16 Q So can you, in your own words,
17 describe the Legal Standards that is used for
18 design patent infringement analysis?

19 MR. BERKOWITZ: Objection to the
20 form. The report speaks for itself.

21 A I couldn't do it much justice, not
22 being a lawyer, but I am -- you know, I do
23 rely upon the information that I've read in
24 here and I do have a good understanding of
25 it, but I would refer to the writing.

Paul Hatch – October 21, 2022

Page 65

1 Even if I were to do the analysis,
2 I would refer back to the writing upon which
3 I relied upon.

4 Q You can read the relevant portion,
5 if you want.

6 A Which of these pages are you
7 referring to as being relevant?

8 Q I mean, that's your call.

9 I'm asking which portion do you
10 think is relevant to your understanding of
11 the Legal Standards used for design patent
12 infringement analysis.

13 A I believe it's all quite relevant
14 for this case.

15 Q You can read it.

16 A It's 14 pages long.

17 MR. BERKOWITZ: Again, the witness
18 is welcome to do that. I'm not sure that's
19 productive use of the parties' time. If
20 that's really what you want, you can have him
21 read from his report.

22 I'm just putting it out there that
23 it might not -- it's your choice, but
24 alternatively, you can have him read through
25 it and you can ask questions you want to ask.

Paul Hatch – October 21, 2022

Page 66

1 MR. CHENG: I want to understand
2 which portion that he thinks is most relevant
3 for the design patent infringement analysis.

4 I mean, the whole section is
5 devoted to Legal Standards but a lot of them
6 are not — they're Legal Standards for
7 analysis.

8 MR. BERKOWITZ: I'm not sure I
9 follow what you're asking, but it's your
10 deposition.

11 I'm not looking to interrupt you.
12 I'm just trying to make use of the time we
13 have. However you would like to proceed.

14 Q Mr. Hatch, you can go ahead and
15 read the portion that you think is relevant
16 for design patent infringement analysis.

17 A Just for clarification, I believe
18 this is all relevant for the analysis. I
19 don't — you mentioned just now but not
20 before that you were looking for the most
21 relevant parts. I think that's a different
22 question.

23 Q Then the most relevant part is
24 fine.

25 A It's all equally relevant. I

Paul Hatch - October 21, 2022

Page 67

1 wouldn't -- I wouldn't --

2 Q That's good.

3 Then you can read all portions that
4 you think is most relevant.

5 A If you're sure you want to use your
6 time this way, because there's four pages of
7 it that I would be reading here.

8 I'm not quite sure why, but I'm
9 happy to read it. So -- and stop me at any
10 time.

11 Q Sure. Of course.

12 A Section 2, Legal Standards.

13 "I am not a lawyer. Rather, I'm an
14 industrial designer" -- and this is obviously
15 just explaining, "Section A, the limiting
16 purpose of a design patent. I understand
17 that a U.S. patent does not grant the owner
18 the right to use the invention. Rather, the
19 owner is granted the right for a limited
20 period of time to prevent others from making,
21 using, offering for sale or selling the
22 patented invention in the United States or
23 importing the patented invention into the
24 United States."

25 Q I'm going to stop you here.

Paul Hatch - October 21, 2022

Page 68

1 Do you know the limited period of
2 time? Do you know how long that is?

3 A Oh, I'm sorry, yes. It's mentioned
4 here. It's the limited time that is given to
5 design patents, which currently is -- or at
6 least for the patents involved in this case,
7 15 years. I believe -- yes, 15 years I think
8 is relevant for this.

9 Q Okay. And --

10 A Go ahead.

11 Q You can start from the second
12 paragraph of Section B and let's read from
13 there.

14 A The second paragraph of Section B
15 reads, "I understand that under precedent
16 from the U.S. Court of Appeals for the
17 Federal Circuit, the Federal Circuit, trial
18 courts have a duty to conduct claim
19 construction in design patent cases as in
20 utility patent cases," and that comes from
21 Egyptian Goddess.

22 "The court has recognized the
23 design patents typically are claimed as shown
24 in drawings, and the claim instruction is
25 adapted accordingly."

Paul Hatch – October 21, 2022

Page 69

1 It refers to --

2 Q You can skip all the cases, just
3 the substantial portion.

4 A "Given the difficulties entailed in
5 trying to describe the design in words, the
6 preferable cost is not to attempt to construe
7 a design patent by providing a detailed
8 verbal description of the claimed design. As
9 I understand, after a design patent claim is
10 construed, the claim must be compared to
11 accused design to determine whether there has
12 been infringement. I also understand
13 infringement occurs when an ordinary observer
14 giving such attention as a purchaser usually
15 gives deems two designs are substantially the
16 same, meaning the resemblance is such as to
17 deceive an observer inducing him to purchase
18 one supposing it to the other."

19 "I am also aware that infringement
20 is determined in the light of prior art by
21 applying the ordinary observer test through
22 the eyes of an observer familiar with the
23 prior art. Thus, the hypothetical ordinary
24 observer is presumed to have a complete
25 knowledge of all relevant prior art."

Paul Hatch – October 21, 2022

Page 70

1 Q Good. Let's stop here.

2 A Okay.

3 Q So have you decided the scope of
4 all the patents-in-suit in this case?

5 MR. BERKOWITZ: Objection to the
6 form. Lack of foundation.

7 A I reviewed the prior art as
8 mentioned before that was --

9 Q Sorry, not the prior arts. Sorry,
10 not the prior arts. I mean the scope of the
11 patents-in-suit.

12 MR. BERKOWITZ: Same objections.

13 A Yes, I believe I was answering that
14 question.

15 I understand you're not referring
16 to the prior art, but the prior art helps us
17 inform, but yes, I did develop an
18 understanding of the scope of the patents,
19 the four patents-in-suit.

20 Q I'm sorry, did you just say that
21 prior art should be considered to construe
22 the scope of the patents?

23 MR. BERKOWITZ: I would suggest
24 restarting the question and answer.

25 MR. CHENG: That's better.

Paul Hatch – October 21, 2022

Page 71

1 Q So did you mean that prior art
2 should be considered for the design patent --
3 for the design patent construction, claim
4 construction?

5 A In the initial part of infringement
6 analysis, the claim construction or the
7 construing that one would do would be
8 analyzing the provided images, the figures of
9 the particular patents to understand whether
10 they are plainly dissimilar to the accused
11 product.

12 Prior art helps inform the -- more
13 exactly the scope in the second parts of the
14 analysis when we look to understand if they
15 are substantially the same.

16 Q Just to be clear, you're saying
17 that accused products and prior art should be
18 considered for claim construction?

19 MR. BERKOWITZ: Objection to form.
20 Mischaracterizes testimony.

21 A Yeah, that's a little different. I
22 was talking about the infringement here, the
23 first step to construe the patents.

24 Q What should be considered for --

25 MR. BERKOWITZ: Don't -- no, no,

Paul Hatch - October 21, 2022

Page 72

1 hang on.

2 You have to let the witness finish
3 if he's in the middle. You can't cut him
4 off.

5 A Initially the figures themselves of
6 the patents represent what is the claimed
7 design and so those -- the first step in
8 infringement analysis to construe what is
9 claimed by those patents.

10 Q Do you think prior art and accused
11 products should be considered for the first
12 step of scope of claim construction?

13 MR. BERKOWITZ: Objection to form.
14 Asked and answered.

15 A No. The accused products do not
16 inform us of the scope of the patents in that
17 first step.

18 Q And what are the scopes for the
19 four patents-in-suit in this case?

20 A In infringement analysis, we
21 construe the claim by looking at the figures
22 of the patents themselves and only if we find
23 that they -- you know, in infringement
24 analysis, if we find that they are not
25 dissimilar from the accused products, we move

Paul Hatch – October 21, 2022

Page 73

1 forward to compare them directly to the prior
2 art.

3 I think that answers your question.

4 Q It didn't. I think you're mixing
5 claim construction with infringement in that
6 analysis.

7 Do you understand that those are
8 two distinct steps for infringement analysis?

9 MR. BERKOWITZ: Objection to form.

10 A I do understand that there are
11 distinct steps in infringement analysis, as
12 I've outlined in my report, and I noticed the
13 experts on the other side did not conduct,
14 which I remarked in my rebuttal.

15 Q So do you know -- so what are the
16 scopes?

17 A The scopes?

18 MR. BERKOWITZ: Objection to the
19 form.

20 Q For the four patents-in-suit.

21 MR. BERKOWITZ: Objection to the
22 form. Compound.

23 A If you're referring to
24 understanding the scope based on construing
25 for infringement analysis, then the figures

Paul Hatch - October 21, 2022

Page 74

1 themselves provide us with what that scope is
2 by analyzing those.

3 I'm sorry, I'm confused by your
4 question. Maybe it was too broad.

5 You said what are the scopes of the
6 patents, is that right?

7 Q What are the scopes for the
8 patents-in-suit after your claim
9 constructions?

10 MR. BERKOWITZ: Objection to the
11 form.

12 A The -- the scope is defined in,
13 say, the second step of infringement
14 analysis.

15 You know, I can't talk about
16 outside of infringement analysis necessarily,
17 but here for this report, it was important to
18 understand the scope for the second part of
19 infringement analysis by analyzing the prior
20 art and its relationship or distance to the
21 patents-in-suit.

22 Q In your opinion, should broken
23 lines be considered for claim construction?

24 MR. BERKOWITZ: Objection to form.
25 Calls for a legal conclusion.

Paul Hatch - October 21, 2022

Page 75

1 A Yeah, it's a very open question
2 again. I cannot answer to whether I
3 considered broken lines to be relevant in
4 this particular analysis, in infringement
5 analysis.

6 Yes, broken lines are to be
7 considered. They represent unclaimed areas
8 of a patent, but they are to be considered as
9 part of the analysis.

10 Q So you think unclaimed areas as
11 waiving the scope of design patent?

12 MR. BERKOWITZ: Objection to form.

13 A I didn't catch the middle word, was
14 it leaving?

15 Q No.

16 So you're saying unclaimed areas
17 are waiving the scope of design patent?

18 A I don't believe that's what I said,
19 but the unclaimed areas should be considered
20 in analysis as I have done. You're asking
21 whether they're waiting.

22 Well, it really depends on what
23 part of analysis and where the unclaimed
24 matter is, you know. It's a -- whether it's
25 in prior art versus the patents at hand.

Paul Hatch – October 21, 2022

Page 76

1 Q Okay. Does the broken line form
2 part of the claimed design for a design
3 patent?

4 A In the designed patents, the
5 unclaimed -- I'm sorry, the broken line
6 represents unclaimed areas of the patent.

7 Q Okay. Do you think an unclaimed
8 area of a patent should be considered for
9 design patent infringement analysis?

10 MR. BERKOWITZ: Objection to form.

11 A It depends whether -- well, it
12 should be considered. That doesn't mean that
13 it's claimed as such, but it also depends on
14 whether the particular unclaimed area is in
15 prior art or if it's in the patents at hand.

16 Q And do you know what side-by-side
17 comparison means?

18 A Yes.

19 Q Can you explain that to me?

20 A I provided side-by-side comparisons
21 in my report to show the analysis, but a
22 side-by-side is comparing one item directly
23 to another, for instance, a -- a particular
24 figure compared to a similar viewpoint of the
25 accused product, for instance.

Paul Hatch - October 21, 2022

Page 77

1 Q You mean, a figure from the
2 patents-in-suit be compared with a figure
3 from an accused product?

4 A Almost, yes. The -- for instance,
5 a side-by-side might be between a patent and
6 an accused product, and so you would show the
7 figure from the patent next to a similar
8 angle of -- of not a figure, but a photograph
9 of the accused product. However, the
10 analysis would be done by viewing the product
11 as a whole.

12 Q And do you think any prior art
13 should be compared with the accused products
14 and the patents-in-suit at the same time?

15 A In the second part of the
16 infringement analysis of the ordinary
17 observer test, it is important to compare,
18 also, the prior art.

19 Q Side-by-side with the accused
20 products and the patents-in-suit?

21 A It's not a hundred percent.
22 I'm sorry, it's known as a
23 three-way analysis, and it doesn't always
24 have to be undertaken.

25 However, I did provide a thorough

Paul Hatch - October 21, 2022

Page 78

1 three-way analysis as the experts on the
2 other side have not done. And so I did do
3 the three-way, which is like a side-by-side
4 analysis.

5 Q Can you point to me where the
6 three-way was done?

7 A It's not in your exhibits yet, but
8 the side-by-side -- I'm sorry, the three-way
9 analysis was done as part of both rebuttal
10 reports that I provided.

11 MR. CHENG: We'll mark this
12 document as Exhibit 4.

13 That is the rebuttal report
14 provided by Mr. Hatch, dated September the
15 12th.

16 (Above-mentioned document marked
17 for Identification.)

18 A Maybe for the record, this is the
19 rebuttal report to Jim Gandy and not the
20 other rebuttal report I provided?

21 Q Right.

22 So there are two rebuttal reports.

23 This rebuttal is for Jim Gandy, and
24 this rebuttal is marked as Exhibit 4.

25 Can you download this report and

Paul Hatch - October 21, 2022

Page 79

1 view the content of the report?

2 A Yes, I do have this report.

3 Q Okay. Can you point out the
4 side-by-side comparison or the three-way
5 comparison portion of the report?

6 A I see you didn't include the
7 exhibit, but it's -- the exhibit to this
8 rebuttal.

9 Q I'm including the exhibit as
10 Exhibit 5 for this deposition.

11 (Above-mentioned document marked
12 for Identification.)

13 Q And I'm sharing that with you in
14 the chat.

15 A Okay. I do have that document.

16 Q Are you saying those are the
17 three-way side by side analysis that you did?

18 A Yes, I did title it that way.

19 So it's a three-way comparison
20 between the infringing products, the patents
21 at issue and what was then the reported
22 closest prior art, the '906.

23 Q The first time that you did this
24 comparison, three-way -- is this the first
25 time you did the three-way comparison in this

Paul Hatch – October 21, 2022

Page 80

1 case?

2 MR. BERKOWITZ: Objection to the
3 form.

4 A I had done this analysis prior to
5 this report but this documented and showed
6 the analysis as a three-way.

7 MR. BERKOWITZ: I just want to note
8 the time.

9 I think we've been going about an
10 hour and 20 or so.

11 I just want to check in and see if
12 the witness needs a break or is anybody
13 thinking about lunch?

14 Do we have any thoughts?

15 MR. CHENG: We can take a break.
16 If anyone wants to get lunch, I'm fine with
17 that.

18 How long do you think we should
19 break for?

20 MR. BERKOWITZ: Do you want to take
21 five or ten minutes now and go for a bit and
22 take lunch later or do you want to take lunch
23 now?

24 MR. CHENG: I'm flexible.

25 MR. BERKOWITZ: Paul, is it okay

Paul Hatch – October 21, 2022

Page 81

1 with you, let's take five or ten now and go
2 for another half an hour or 40 minutes and
3 take lunch.

4 How does that sound?

5 THE WITNESS: That sounds perfectly
6 fine with me.

7 (Brief recess taken.)

8 Q I shared a document marked as
9 Exhibit 6 in the chat.

10 (Above-mentioned document marked
11 for Identification.)

12 Q Mr. Hatch, can you open that
13 document?

14 A I have it open.

15 Q I want you to look at this report
16 and confirm that it's the report that you
17 provided.

18 A Yes, this is a report that I --
19 that I provided.

20 Q Do you know when you provided this
21 report?

22 A Yes, I see it was August 2021.

23 Q Is that when you provided this
24 report to defendants?

25 A I believe it would have been very

Paul Hatch – October 21, 2022

Page 82

1 close to this date, if not actually on that
2 date.

3 I do see, however, this report has
4 been marked up by someone and that was not in
5 the original version.

6 Q That's marked up by the court.
7 That's the only way that we received the
8 report.

9 Did you do a three-way comparison
10 in this report?

11 MR. BERKOWITZ: Objection to the
12 form.

13 A I provided -- I did a three-way
14 comparison as part of my analysis at this
15 stage, but I provided that three-way
16 side-by-side, at least presented it in the
17 report that followed this. That was the
18 rebuttal report of last year.

19 Q I'm just asking, did you do a
20 three-way comparison in this report?

21 MR. BERKOWITZ: Objection to form.

22 A I did a three-way comparison, to
23 answer your question, as part of my analysis
24 as I was creating this report.

25 I did not show the three-way until

Paul Hatch – October 21, 2022

Page 83

1 the rebuttal, which followed this shortly
2 after this report.

3 Q Why did you not show the analysis
4 that you did in this report?

5 MR. BERKOWITZ: Objection to form.

6 A I -- this report was about my
7 initial analysis and to provide the details
8 that were important here rather than respond
9 to information that the experts on the other
10 side had then brought up to light.

11 So as they considered the '906 to
12 be the closest prior art, I then provided the
13 three-way analysis. However, prior to that,
14 the '906 was only one of the many prior art
15 for me to report about in this report. I
16 hope that was very clear.

17 Q Not entirely.

18 Can you --

19 A Sure.

20 Q Can you rephrase your answer,
21 because that sounds very confusing.

22 A Okay, yes.

23 I did mention a couple of things.
24 But simply, I did do analysis on the prior
25 art, which included, for instance, the '906.

Paul Hatch - October 21, 2022

Page 84

1 However, because there was many
2 pieces of prior art, I didn't include a
3 three-way comparison analysis as part of this
4 report on every one of those prior arts until
5 the closest prior art was identified by the
6 experts, and then I provide a three-way
7 analysis as part of my report, for what they
8 considered to be the closest prior art.

9 Q Do you agree that the '906 patent
10 is the closest prior art?

11 MR. BERKOWITZ: Objection to the
12 form.

13 A When they put it forward, I
14 don't -- out of the choices of prior art that
15 has been put forward in this case, I don't
16 disagree necessarily. I don't find it
17 particularly -- well, I'm sorry.

18 You know, it was important for me
19 to then analyze the '906 because they had
20 proposed it. It certainly wasn't my role
21 to -- to question whether that's the closest
22 or not, but to analyze it according to what
23 they proposed as being the closest.

24 My understanding of the law in this
25 situation is that it is the -- the burden of

Paul Hatch – October 21, 2022

Page 85

1 the defendant to provide the closest prior
2 art and they did that and I analyzed it.

3 Q Do you think an ordinary observer
4 would know about the D '906 patent?

5 MR. BERKOWITZ: Objection to the
6 form.

7 A As I stated, the understanding of
8 infringement and in the ordinary observer
9 test, the understanding of the ordinary
10 observer, an ordinary purchaser with a -- who
11 is an ordinary purchaser of products like
12 this, would have had knowledge of prior art
13 at the time of the patent.

14 Q I'm sorry, this might come as I'm
15 asking you the same question, but because
16 your answer was not very clear, do you think
17 this ordinary observer would know about the D
18 '906 patent when looking at the products?

19 MR. BERKOWITZ: Objection to the
20 form.

21 A Yes. I'm sorry for my long
22 answers. Sometimes you're being very broad
23 with your questions and so I have to make
24 sure you understand where I'm coming from.

25 But the ordinary observer in this

Paul Hatch – October 21, 2022

Page 86

1 particular case would be familiar with the
2 '906 as well as other prior art. That is my
3 understanding.

4 Q And what are the differences?
5 Let's do the analysis one by one. Let's
6 first focus on the D '723 patent, which is
7 one of the four patents-in-suit.

8 What are the differences between
9 the D '723 patent versus the D '906 patent?

10 MR. BERKOWITZ: Objection to the
11 form.

12 A So you're requesting to run through
13 the ordinary observer test, in which case we
14 now look for similarities between the product
15 and to understand whether they are not
16 dissimilar or not.

17 Is that correct?

18 Q No, I'm asking you to compare the
19 patents-in-suit with the prior art and to
20 identify the similarity and the dissimilarity
21 between those two patents?

22 MR. BERKOWITZ: Object to the form.
23 It's outside the scope.

24 A Okay. You said between those two
25 patents.

Paul Hatch - October 21, 2022

Page 87

1 Which two are you referring to?

2 Q I was referring to the D '723
3 patent and the prior art, D '906 patent.

4 A I see.

5 Well, that's not part of the
6 analysis. I think you misunderstand.

7 We compared the accused product and
8 the patent to the prior art to understand
9 which may be closer.

10 Q So you do not think a comparison
11 between the patents-in-suit and the prior art
12 is necessary?

13 MR. BERKOWITZ: Objection to form.

14 A The patents -- each of the
15 patents-in-suit is compared to prior art,
16 such as the '906, only when also comparing it
17 to the accused because it's relevant to
18 understand the distance of one to the other
19 and not a direct comparison in the way that
20 you're suggesting.

21 Q So -- well, I'm not suggesting
22 anything. I'm simply asking whether or not
23 you have done any comparison between the '723
24 patent and the prior art, D '906 patent.

25 A Yes, I -- I have conducted -- you

Paul Hatch – October 21, 2022

Page 88

1 know, I became very familiar with the '906
2 patent, to understand -- I'm not sure what
3 your question is.

4 I did analyze the patent. I did
5 compare it -- sorry, I did compare the '906
6 to the '723 in particular regard as part of
7 the three-way analysis, which included the
8 accused product because the '906 helps us
9 understand the scope of the '723.

10 Q Scope is the word used for claim
11 construction.

12 So are you saying the '906 patent
13 will help us understand claim constructions?

14 MR. BERKOWITZ: Objection to the
15 form.

16 A And again, you're being quite
17 general.

18 But at the very start of the
19 infringement analysis, we looked at the
20 patent, its patent history, you know,
21 claimed/unclaimed matter. And the -- the
22 prior art, such as the '906, is only put into
23 direct comparison when we have already
24 decided to move into the second part of the
25 infringement analysis. And that being said,

Paul Hatch – October 21, 2022

Page 89

1 of course, because any prior art that's
2 disclosed in part of the patent, it is part
3 of the initial analysis as well.

4 I'm sorry, that was very long as
5 well, but I think your question was a little
6 bit off.

7 Q I don't think my question was off.
8 I think you're confusing the scope analysis
9 with the infringement analysis, but let's
10 just be clear.

11 I will ask you if the '906 patent
12 was compared to the D '723 patent.

13 MR. BERKOWITZ: Objection to form.
14 Go ahead.

15 Q Did you compare the D '723 patent
16 with the D '906 patent to identify the
17 similarity and dissimilarity between the two
18 patents?

19 A I did include the -- comparing the
20 '906 to the '723 when doing a three-way
21 analysis with the accused products in mind to
22 understand the similarities and
23 dissimilarities.

24 Q I just want to give you some
25 background of why I ask this question.

Paul Hatch – October 21, 2022

Page 90

1 A Okay.

2 Q So prior art comes into play to
3 show that there are some prior art that has
4 disclosed certain designs already.

5 So in light of this -- so in the
6 infringement analysis, when you compare the
7 accused products with the patents-in-suit, if
8 your -- if the -- if there is a prior art,
9 the difference between the prior art and the
10 patents-in-suit is constructive.

11 Because when you compare those
12 patents, when you compare the patents-in-suit
13 with this prior art, you can tell that
14 they're similar in certain aspects and
15 they're dissimilar in certain aspects, and
16 that helps you to perform this comparison
17 between the accused products and the
18 patents-in-suit.

19 So first, you have to understand
20 what are the differences between the
21 patents-in-suit and the prior art.

22 If the patents-in-suit and the
23 prior art are the same, then really there's
24 no need to do further analysis.

25 So that's why I ask you, can you

Paul Hatch - October 21, 2022

Page 91

1 see the similarities and dissimilarities
2 between the D '723 patent and the D '906
3 patent.

4 MR. BERKOWITZ: Objection to the
5 form, argumentative, asked and answered.

6 A So to clarify, you're asking if I
7 can see the similarities and dissimilarities
8 between the '723 patent and the '906?

9 Q Yes.

10 A Which the answer would be yes.

11 Q What are the similarities between
12 those two patents?

13 A The -- again, as part of this
14 analysis -- I guess what you're saying is --
15 I'm not sure what you're saying.

16 What are the similarities?

17 What I've provided here was part of
18 a three-way analysis with the accused really
19 to see about which is clear rather than list
20 individual similarities, which is -- or
21 differences, which is not technically part of
22 the analysis, but you are correct in saying
23 that the '906 should be understood for what
24 it stands for.

25 But the analysis is more about the

Paul Hatch – October 21, 2022

Page 92

1 distance between it and the '723, and there's
2 a fair amount of distance.

3 Maybe that answers your question.
4 There's a lot that they have in difference.

5 Q Let's focus on the distance, then.
6 Let's see, what are the differences between
7 the D '723 patent and the D '906 patent?

8 A Well, overall impression, as would
9 be seen by an ordinary observer at the time,
10 it gives a very different overall impression.

11 It's incorrect to, say, list
12 individual little details, but in viewing the
13 two images in different angles, there is a
14 very different impression given by the '906,
15 which -- which has a very, you know, smooth,
16 rounded, clear of any kind of markings or
17 hard edges. You know, it's got this kind of
18 melted look to it, right, just for other
19 conversation to put it into words, which is
20 highly different from the impression that we
21 get from any of the other products that I
22 analyzed as part of this case.

23 Q So I was asking you the differences
24 between the '723 patent and the prior art of
25 the '906 patent, and you said there are hard

Paul Hatch - October 21, 2022

Page 93

1 edges and one is more smooth than the other
2 and those are the differences between those
3 two patents.

4 MR. BERKOWITZ: Objection to the
5 form.

6 A Yeah, you definitely misstated my
7 words.

8 But the important thing is that
9 it's about the overall impression. And the
10 overall impression we have from the '906 is
11 this very kind of melted kind of feel,
12 whereas the '73 -- were you -- sorry, I'm
13 just checking.

14 Is it the '726 or '723? '723,
15 correct. Whereas the '723 in particular does
16 not give that overall same impression of it
17 being melted.

18 Q Do they have similar overall shape?

19 MR. BERKOWITZ: Objection to form.

20 A Depends what you mean by shape.

21 Q The hourglass shape that you
22 mentioned -- I'm sorry, I'll let you finish
23 first.

24 A Yeah, I guess I was going to say
25 that, you know, it's not about necessarily

Paul Hatch - October 21, 2022

Page 94

1 shape analysis of the product as a whole.

2 It's about the impression.

3 However, in my report, I did refer
4 to the hourglass shape, for instance, which
5 is a part of the overall impression. It
6 helps inform the overall impression.

7 And, you know, to help answer that
8 question, yes, they do both share as part of
9 the overall impression an hourglass shape.

10 Q If that hourglass shape -- does the
11 hourglass shape form an impression of the
12 overall shape of the product?

13 MR. BERKOWITZ: Objection to the
14 form.

15 A It's my opinion that the hourglass
16 shape contributes to the overall impression.
17 I think that's important. It's not the
18 entirety of the impression.

19 Q What other attributes do you think
20 contributes to the overall impression?

21 A Of which one?

22 Q Of the '723 patent.

23 A I believe, you know, the ordinary
24 observer, the impression that the ordinary
25 observer at the time, who's never seen a

Paul Hatch – October 21, 2022

Page 95

1 product like this but has knowledge of the
2 prior art that was shown, would notice, yes,
3 it has an hourglass shape, but also, a
4 generally flat surface with areas to put your
5 feet, for instance, and that it has open
6 fenders on the side above the wheels.

7 And, you know, there are a number
8 of things that make that overall impression
9 and the — some of the feel of those forms
10 that make that impression, are hard edges,
11 defined shapes.

12 So that's the general kind of
13 impression, and it's not limited to the words
14 I used. I'm just trying to describe the
15 image that we see in context to looking at
16 the prior art that existed before.

17 Q So just to summarize what you said,
18 you said that they both have similar
19 hourglass shape.

20 Is that correct?

21 MR. BERKOWITZ: Objection to form.

22 A Yeah. More specifically, I said
23 that they do both share an hourglass shape,
24 which is part of the overall impression.

25 Q Which is part of the overall

Paul Hatch – October 21, 2022

Page 96

1 impression.

2 And the dissimilarity between the
3 '723 patent and the '906 patent, you said,
4 comes from the flat surface, the open fenders
5 and the overall feel, you said, like the
6 feeling where you look at the products.

7 A Yes.

8 Q Okay. And together with hard
9 edges, which really are the key contributors
10 that distinguish one -- distinguish the D
11 '723 patent from the D '906 patent?

12 A That's more or less incorrect to
13 take the wording so literally, but the idea
14 is that the ordinary observer would notice
15 differences, such as that contributes to the
16 overall impression.

17 So the hourglass shape is still
18 part of the overall impression of -- of both,
19 but the overall impression is very different
20 at the end of viewing both.

21 Q Okay. And then you think that's
22 why an ordinary observer would not confuse
23 the D '723 patent to the D '906 patent,
24 despite that the hourglass shape contributes
25 to the overall impression or the sufficient

Paul Hatch - October 21, 2022

Page 97

1 dissimilarity, including the flat surface,
2 the fenders and the edges and the overall
3 feelings when you look at the two patents,
4 and that those all together contributes to
5 the -- to the dissimilarity that the ordinary
6 observer can distinguish?

7 MR. BERKOWITZ: Objection.

8 Objection to the form, mischaracterizes
9 testimony.

10 A Yeah, I think that's almost
11 correct, but this was not -- you know, you
12 framed this as whether the ordinary observer
13 would be confused between these two products,
14 which was not part of the analysis here.

15 I was just explaining how the
16 ordinary observer would view these as being
17 quite different, but I did not analyze, you
18 know, the ordinary observer test as to
19 whether these are substantially different,
20 you know, using those official words. That
21 was not part of the analysis.

22 What I was saying is, you know,
23 it's my opinion that there is a lot of
24 difference in the overall impression here.

25 Q Are these differences substantially

Paul Hatch - October 21, 2022

Page 98

1 dissimilar?

2 MR. BERKOWITZ: Objection to the
3 form.

4 A To conduct an official analysis, I
5 would have to look at the prior art of the
6 '906 to -- to understand it a lot better.

7 But my -- my opinion is that the
8 impression is that it is -- it is really
9 quite different, you know. I wouldn't want
10 to use the word "substantially different"
11 because that infers that I've conducted a
12 full analysis on that specific item, whereas
13 the analysis I did was using it as the prior
14 art and not the target of the analysis.

15 I hope I wasn't too confusing
16 there.

17 Q No, you're not confusing.

18 I think it's good that we can
19 recognize there are differences between the D
20 '723 patent and the D '906 patent because
21 that's constructive, and I won't go through
22 all the products because we have four patents
23 and we have four products with 16 different
24 analysis.

25 I won't ask you to do all 16 of

Paul Hatch - October 21, 2022

Page 99

1 those analysis.

2 Let's just pick one product. Let's
3 just pick a -- product B, let's go with
4 product B.

5 So do you think product B is
6 substantially different from the D '906
7 patent?

8 A My analysis was actually on the
9 difference between product B or differences
10 in similarities between B and the patent, say
11 the '723, among others.

12 Q The D '723, okay.

13 Do you find the product B is
14 substantially dissimilar from the D '723
15 patent?

16 A No, I find it substantially the
17 same.

18 Q Does product B have a smooth
19 hourglass shape?

20 A The hourglass shape that it has
21 contributes to the overall impression. It
22 does have an hourglass shape, yes.

23 Q Does it have smooth lines or does
24 it have edgy lines?

25 MR. BERKOWITZ: Objection to the

Paul Hatch - October 21, 2022

Page 100

1 form.

2 A The edgy lines that you referred to
3 do contribute to the overall impression of
4 the Gyroor B.

5 Q Of the Gyroor -- of Gyroor product
6 B.

7 Well, when we look at the surface,
8 do they have different patents and design
9 lines on the standing pads, the two pads that
10 you stand on?

11 A Are you -- so when you say the
12 difference, you're talking about between the
13 '723 and Gyroor B application?

14 Q Yes.

15 A They both share having a generally
16 flat, you know, pronounced flat area for
17 standing on. That's something they share,
18 and there are individual differences when we
19 zoom in further.

20 Q Does the D '906 patent have
21 surfaces to stand on?

22 A The '906 patent is a much
23 smoother -- I called it a melted rounder
24 form.

25 It's presumed you may be able to

Paul Hatch – October 21, 2022

Page 101

1 stand on it, but it does not have a
2 pronounced flat surface for standing on like
3 the '723 and the accused products.

4 Q The flat surface you stand on,
5 which part is not flat?

6 If you can point that through the
7 pictures, it would be very helpful. If we're
8 looking at Exhibit No. 5, we can just point
9 to the pictures. So that will be easier.

10 A Are you referring to the '906?

11 Q No, I'm referring to the flat
12 surface that you said is present in the D
13 '723 patent but not in the D '906 patent.

14 I just want to ask you, which
15 picture you looked at and made that
16 determination.

17 A Okay. Obviously, the analysis is
18 done on a combination of all figures, but you
19 do see a generally flat surface and
20 pronounced standing pads on the '723.

21 Q From which picture?

22 A Again, the analysis was done on all
23 pictures but we can look at Figure 6, for
24 instance, of the D '723 patent.

25 Q Which page are you referring to?

Paul Hatch - October 21, 2022

Page 102

1 A You said Exhibit 5?

2 Q Yes.

3 A We can look at page 4.

4 Q Okay.

5 A I see the rendition is a little
6 compromised, but I'm obviously very familiar
7 with the patent image itself.

8 But we see that the surface of the
9 '723 has a generally flat surface and it has
10 pronounced -- you know, when you compare it
11 here to the '906, the '723 has pronounced --
12 what did you call it? -- tread areas, I
13 think, for treads.

14 So that flatness there is
15 pronounced. It's being made very visible,
16 and that's seen with all competitors too, but
17 not the '906.

18 Q So you're saying the '906 patent
19 doesn't have a flat surface to stand on?

20 A No, that's not what I said.

21 Q I'm trying to understand what you
22 said. You said the '723 patent has a flat
23 surface.

24 Is that flat surface also present
25 in the D '906 patent?

Paul Hatch - October 21, 2022

Page 103

1 A The '723 has a generally flat
2 surface at the top, but it has these
3 pronounced treads.

4 Q By treads, you mean the lines, sir?

5 A Yes. To clarify -- that's a good
6 question. I was trying to think of the word
7 you used, but the foot tread areas, right,
8 those areas, the footpads, let's call it, are
9 pronounced and we see exactly, you know, that
10 generally flat area with the pronounced foot
11 treads, and that is not present in the '906,
12 for instance.

13 Q When you say it's pronounced, are
14 you saying that -- how is that more
15 pronounced in the D '906 patent, because in
16 the D '906 patent there are two flat surfaces
17 as well?

18 MR. BERKOWITZ: Objection to the
19 form.

20 A Yes, I think you're assuming that
21 they are flat surfaces there. You know, I
22 would say it's generally flat, even on the
23 '906. However, there are no pronounced, that
24 is, there's no defined areas of footpads, so
25 I have no idea.

Paul Hatch - October 21, 2022

Page 104

1 For instance, the inventor at that
2 point had the inclination of having a defined
3 area to mark where the feet might go, whereas
4 the '723 does have some pronounced areas
5 where the feet might go.

6 Q So you're saying --

7 A I'm sorry, by pronounced, I mean
8 something like explicit, if that helps.

9 Q And it helps.

10 And by the '906 patent, you think
11 people will not know where to stand on this
12 product?

13 MR. BERKOWITZ: Objection to the
14 form.

15 A That's not what I'm saying.

16 But for instance, the '906 could
17 be -- as you know, we don't know what size
18 this is.

19 It could be -- the whole thing
20 could be as big as one foot, a person's foot,
21 or it could be as big as a surfboard, but
22 there's no indication as to where one might
23 provide footpads in this invention.

24 If it were bigger, like you would
25 have smaller footpads near the middle, but we

Paul Hatch - October 21, 2022

Page 105

1 don't know that. The designers did not have
2 possession of an idea at that time of -- of
3 pronouncing or explicating of something like
4 a footpad.

5 Q And how is that pronounced in the D
6 '723 patent?

7 MR. BERKOWITZ: Objection to the
8 form.

9 A We do see some form of area that
10 has been outlined that we can infer is for
11 standing on, that we're calling footpads.

12 But really, in doing the
13 comparison, we're seeing a pronounced area,
14 an explicit defined area on this and on the
15 accused products that is absolutely not
16 present in the prior art. It's entirely new.

17 Q So you're saying the lines on the
18 standing pad marked where people should
19 stand, and without the lines, people would
20 not know where to stand on a hoverboard?

21 MR. BERKOWITZ: Objection to the
22 form.

23 A That's also not what I'm saying.

24 But what I am saying is, that the
25 inventors of the '723 patent did explicate

Paul Hatch - October 21, 2022

Page 106

1 certain zones or areas that were not
2 pronounced or explicated in the prior art
3 '906. These areas, you and I, today, are
4 inferring calling footpads.

5 They may all be something
6 different, but yes, they are visibly present
7 and contribute to the overall impression.

8 Q And to your understanding, was that
9 the first time that this defined area for
10 standing was ever disclosed on the hoverboard
11 products? Was that --

12 MR. BERKOWITZ: Objection to the
13 form.

14 A That's not what I said, but when
15 comparing to the '906, the '906 does not
16 disclose that as an idea and they have not
17 explicated that.

18 I believe in the further prior art
19 of items of other forms, there were some
20 areas that might represent explicating
21 footpads or something similar, but not on the
22 '906.

23 Q I see.

24 So you agree, although that was not
25 included in the '906 patent, that was

Paul Hatch - October 21, 2022

Page 107

1 disclosed in some other prior art?

2 MR. BERKOWITZ: Objection to the
3 form, mischaracterizes testimony.

4 A Yes, almost. It was not part of
5 the '906 but there exists other prior art
6 that I analyzed that had areas that may be
7 defined as -- as footpads. However, not
8 in -- not giving the same overall impression.

9 Q Overall impression of the standing
10 footpads?

11 MR. BERKOWITZ: Objection to the
12 form.

13 A Overall impression of the object as
14 a whole. Thank you for allowing me to
15 clarify.

16 Q No problem.

17 MR. CHENG: It's almost 1:00.
18 Let's take a lunch break.

19 MR. BERKOWITZ: Okay.

20 (Luncheon recess taken.)

21 Q Mr. Hatch, did you communicate with
22 your counsel during the break?

23 A No, I did not.

24 Q And let's get back to the report.

25 Mr. Hatch, you mentioned that the

Paul Hatch – October 21, 2022

Page 108

1 standing pad was present, the flat area of
2 the standing pad was present in the D '723
3 patent but not in the prior art.

4 Is that correct?

5 A I said the -- one of the things
6 that contributes to the overall impression
7 are the pronounced areas that we're calling
8 standing pads that are not pronounced in the
9 '906 in such a way.

10 Q Are you talking about appearance
11 when you're talking about pronounced?

12 A Yes, yes. I also use the word
13 explicated, but there's -- you know, the
14 inventor at the time was clearly marking that
15 area and designating it for something that
16 they presume is the feet, which the '906 did
17 not.

18 Q In your opinion, an ordinary
19 observer would not know the area for feet in
20 the '906 patent?

21 MR. BERKOWITZ: Objection to form.

22 A The ordinary observer, viewing
23 '906, would not be called attention to a
24 particular area on that generally flat
25 surface for any specific reason.

Paul Hatch - October 21, 2022

Page 109

1 Q When we're talking about
2 appearance, what do you consider as
3 appearance? Or let's use the more correct
4 term, the ornamental aspect.

5 What do you consider as ornamental
6 in a design patent?

7 MR. BERKOWITZ: Objection to form.

8 A I guess we talk about the
9 impression that the ornamental appearance
10 makes and that's important.

11 In this particular case, say in the
12 '723, the ornamental appearance is -- is
13 claimed and shown using solid lines and
14 everything on that contributes in some way to
15 the overall impression.

16 Q I didn't ask -- I didn't ask
17 overall impression. I asked what do you
18 consider as ornamental.

19 MR. BERKOWITZ: Objection to form.

20 A Yeah, I -- I was telling you about
21 what I consider ornamental to be in this
22 case, which is exactly what we're seeing as
23 the claimed design.

24 You know, the product as a whole
25 shows an ornamental design as shown.

Paul Hatch - October 21, 2022

Page 110

1 Q Do you understand -- do you
2 understand what is considered a functional
3 aspect of a design pattern?

4 A Yes, the question about
5 functionality is quite different from what
6 you asked before, but functionality, for
7 instance, there's a certain utility that is
8 implied by an ornamental object.

9 And in infringement analysis, we do
10 try to identify whether certain aspects are
11 driven primarily by functionality or not.
12 And the functionality implies that -- I'm
13 sorry, a long-winded answer again.

14 Because functionality is a big
15 thing. It's -- you know, if it's driven by
16 functionality, if a certain aspect of the
17 design is driven by functionality rather than
18 purely ornamental, that means, you know, if
19 it looked different, it wouldn't necessarily
20 provide the same function, therefore, it's
21 primarily functional.

22 In this case, we are looking at an
23 ornamental design.

24 Q Do you know functionality and the
25 functional aspects of a design are two

Paul Hatch – October 21, 2022

Page 111

1 different concepts?

2 MR. BERKOWITZ: Objection to the
3 form.

4 A It depends what you mean, whether
5 you're talking about infringement analysis or
6 invalidity. That plays a different role in
7 there or even in trade dress, so yes, there
8 are differences.

9 Q In the context of design patent
10 infringement analysis.

11 A And the question being, do I
12 understand there may be a difference between
13 functional elements and functionality in
14 infringement analysis, is that your question?

15 Q In infringement analysis context,
16 do you understand the functionality and the
17 functional aspects of a design are two
18 different concepts?

19 MR. BERKOWITZ: Objection to the
20 form.

21 A No, I understand there's a
22 difference, but what's -- yes, because for
23 instance, an ornamental part of a design may
24 have a function.

25 They have functionality, but

Paul Hatch – October 21, 2022

Page 112

1 functional aspects might -- might be talking
2 about certain parts that may be or may not be
3 driven by function.

4 Q Are there any parts in a hoverboard
5 patent, let's say the D '723 patent, driven
6 by function?

7 MR. BERKOWITZ: Object to the form.

8 A Did you say are there any reports,
9 is that what you said.

10 Q No.

11 Are there any parts in the D '723
12 patent driven by function?

13 MR. BERKOWITZ: Objection to the
14 form.

15 A My understanding is that what we
16 see is not primarily driven by function, that
17 the claimed design is ornamental.

18 Q Is a claimed design ornamental
19 because only ornamental aspects are claimed
20 design?

21 A Is that a question?

22 Q What I'm asking you is, is there
23 a -- functional aspects in the -- in the
24 claimed design here?

25 MR. BERKOWITZ: Objection to the

Paul Hatch - October 21, 2022

Page 113

1 form.

2 A The claimed design is of an
3 ornamental design. The -- it depicts
4 something that would have certain utilitarian
5 use, i.e., functional usage, however, they
6 are primarily ornamental in my analysis.

7 Q And what are those functional
8 utility things that would be in the design
9 patent?

10 MR. BERKOWITZ: Objection to the
11 form.

12 Q And let's use the D '723 patent as
13 an example.

14 A Okay. So from the patent, it can
15 be inferred that the utility or the function
16 of this claimed design is of a self-balancing
17 vehicle of some kind because that's the title
18 of the patent.

19 There are no other descriptions to
20 call out any particular functions of the
21 claimed design. So if you're asking about
22 the claim of the claimed design, I think
23 that's about it.

24 Q Well, I guess you still haven't
25 been very clear as to your understanding of

Paul Hatch - October 21, 2022

Page 114

1 ornamental aspects of this claimed design.

2 So you're saying all claim designs
3 are ornamental in the D '723 patent?

4 A Yes, all claim parts of the design
5 of the '723 patent are primarily ornamental.
6 That is correct, yes.

7 Q When you say "primarily
8 ornamental," are you indicating part of them
9 or not?

10 A I'm sorry, I didn't catch the last
11 bit. Am I indicating --

12 Q Part of the claimed design are not
13 ornamental?

14 A No. Because I was talking about
15 the claimed design as a whole, which is
16 important in infringement analysis to look at
17 the object as a whole.

18 And what we see there, all of the
19 claim parts, as a whole, relate to ornamental
20 design. They are not primarily functional,
21 for instance, because it could have a very
22 different appearance and still potentially
23 provide the same function --

24 Q So you just mentioned --

25 A -- on a self-balancing vehicle.

Paul Hatch - October 21, 2022

Page 115

1 Q Yes.

2 So you just mentioned function, so
3 it does serve function via on the line
4 function can be served in different design,
5 that's what you're saying?

6 A That's correct.

7 And the function that I explained
8 before, its function as a self-balancing
9 vehicle and could have a different ornament.

10 Q And do you think that the D '906
11 patent have different ornamental or different
12 ornaments from the D '723 patent?

13 A The '906 also claims an ornamental
14 design that is different from the '723
15 patent, yes.

16 Q And do you think the product B also
17 served the same function with a different
18 ornament in this design?

19 MR. BERKOWITZ: Objection to form.

20 A I don't know about the same
21 function.

22 What function are you referring to
23 with that particular product?

24 Because with that product, it's --
25 it's more specific about what function it

Paul Hatch - October 21, 2022

Page 116

1 serves.

2 Q What function?

3 You mentioned the function. You
4 said the function can be served with
5 different designs.

6 So I'm asking you, how the function
7 in B -- so what's the function in the D '723
8 patent does the design serve?

9 A The claimed design function is --
10 is shown as being for a self-balancing
11 vehicle. So that's its overriding function.

12 Product B falls under that
13 category, but it -- it limits itself in the
14 functions it describes. It's specifically a
15 hoverboard design.

16 Q So is product B a hoverboard under
17 the same concept as a hoverboard as a
18 self-balancing vehicle?

19 MR. BERKOWITZ: Objection to the
20 form.

21 A A hoverboard could be considered a
22 self-balancing vehicle.

23 Q And does product B have a function
24 of a hoverboard or self-balancing vehicle?

25 A It serves as a hoverboard, which is

Paul Hatch - October 21, 2022

Page 117

1 a type of a self-balancing vehicle, yes.

2 Q And is that on the line function
3 served through the same design as the D '906
4 patent or D '723 patent or served through a
5 different design?

6 MR. BERKOWITZ: Objection to the
7 form.

8 A The function of a self-balanced
9 vehicle, as we understand, can be served
10 through -- this was part of my report -- can
11 be served through other ornamental designs,
12 such as and includes product B.

13 Q And how is product B's ornamental
14 design different from -- different from the D
15 '723 patent?

16 MR. BERKOWITZ: Objection to the
17 form.

18 A It -- it's -- the ornamental design
19 is -- is very similar of scores, and I guess
20 you're asking my function before, but now
21 you're talking about ornamental design.

22 You know, it's very similar, but
23 there are differences in smaller details.

24 Q Can you highlight those differences
25 for me?

Paul Hatch - October 21, 2022

Page 118

1 A As I've shown you in my report, it
2 shares a lot of commonality and we -- we look
3 at that through the eyes of an ordinary
4 observer in context of the prior art.

5 Q If you --

6 MR. BERKOWITZ: You have to let him
7 finish.

8 MR. CHENG: That's fine. I thought
9 he was finished.

10 A So rather than looking at the
11 individual differences, which is the
12 incorrect analysis in this case, we look at
13 the design as a whole and compare them.

14 Q So you only look at the design as a
15 whole.

16 Do you still look at the design in
17 the details?

18 A The design in details -- you know,
19 the details of the design, the ornamental
20 details of the design do contribute to the
21 overall impression.

22 And we -- we look at, okay, what is
23 the contribution, what -- what contributes
24 substantially to that whole world impression
25 and if there are small details like screw

Paul Hatch - October 21, 2022

Page 119

1 holes that we believe the ordinary observer
2 would not, that would not affect the overall
3 impression to the ordinary observer, and
4 those have a lesser effect on the overall
5 impression.

6 Q And again, I -- well, I think the
7 defendants have been much better image in the
8 screw hole but the question is, can you
9 highlight the differences between product B
10 and the D '723 patent for me?

11 A The differences, again, in context
12 of the '906, which is the --

13 Q That's not the question.

14 A We can do it the incorrect way, if
15 you want.

16 Q That's not the question that I
17 asked.

18 I'm asking if you compare product B
19 with the D '723 patent, can you highlight the
20 differences between the product B and the D
21 '723 patent?

22 MR. BERKOWITZ: Objection to form.

23 A Maybe, you know, to do that, we
24 could use one of my -- my tables, right?

25 So we can look at it officially so

Paul Hatch - October 21, 2022

Page 120

1 I can answer your question.

2 Q Go ahead.

3 A I'm thinking where -- you're
4 talking about '723 compared to B.

5 So if we look at Exhibit 5, and
6 that would be page 1 to 5. And to zero in on
7 one page, I guess we can look at page 4
8 because we get an angle view of it.

9 We see the '723 and product B and,
10 of course, the prior art.

11 So just to clarify, before I do
12 this, you are asking about the viewpoint of
13 the ordinary observer in this.

14 Is that correct?

15 Q Well, I guess that comes to the
16 question. You have to define the ordinary
17 observer for me first.

18 A Oh. Well, the ordinary observer
19 defined, obviously, in my report, which I can
20 refer to here.

21 The ordinary observer in
22 infringement analysis, as you know, is
23 defined as the ordinary purchaser. And we
24 look at the ordinary observer to understand
25 the level of acuteness.

Paul Hatch - October 21, 2022

Page 121

1 And in this particular case, we
2 consider the ordinary observer, i.e., the
3 purchaser, to be the consumer user or, say,
4 the parent of the user, if it's a child who
5 is choosing and purchasing this product,
6 whether they're on social media or online or
7 some brick and mortar store.

8 So they come across this and choose
9 to purchase this. I think that answers your
10 question to define an ordinary observer in
11 this case.

12 Q Can you point to the section where
13 you define this ordinary observer in your
14 report?

15 A Sure.

16 I believe it's -- which exhibit is
17 the initial report?

18 Q It's Exhibit 3.

19 A Yes, thank you.

20 So it is on page -- it's page 8.
21 There's a section -- I'm sorry, it's not page
22 8.

23 Q Is it page 6?

24 If you go by the cover, it's page
25 8, but if by the line, the page number, it's

Paul Hatch – October 21, 2022

Page 122

1 page 6.

2 A Yes, that's correct.

3 I have three paragraphs about a
4 definition of an ordinary observer generally.

5 The third paragraph is where I
6 state specifically here, in my deposition, of
7 the ordinary observer.

8 Q Thank you.

9 If you can read that portion that
10 you defined ordinary observer in this case
11 would be very helpful.

12 A It is my opinion that an ordinary
13 observer in this case is the typical
14 purchaser of hoverboards, i.e, a consumer
15 user or the parents of a user each having
16 little or no experience purchasing
17 hoverboards.

18 The ordinary observer encounters
19 products like the claimed designed, online
20 stores, television and entertainment media
21 and social media and purchases them using
22 online stores or from brick and mortar
23 stores, like Best Buy or Walmart.

24 Q So a typical, ordinary observer may
25 have knowledge of the prior art?

Paul Hatch – October 21, 2022

Page 123

1 A Yes, a typical, ordinary observer
2 would have knowledge of the prior art, the
3 relevant prior art.

4 Q And does a consumer have little or
5 no experience purchasing hoverboards indicate
6 that person's knowledge of hoverboards?

7 MR. BERKOWITZ: Objection to the
8 form.

9 A So a real life consumer, which I
10 think you're referring to, it's my opinion
11 that they would not have substantial
12 knowledge of the industry as a whole, which
13 is expected here.

14 They are an ordinary purchaser with
15 ordinary acuteness to hoverboards and don't
16 necessarily have years of experience
17 designing or understanding the differences,
18 the nuances of hoverboards.

19 Q And why did you pick this
20 purchaser, a real life purchaser for this
21 particular case?

22 A It's my understanding that that's
23 the majority, the high majority of people who
24 buy these products and products like this,
25 based on prior experience with this category

Paul Hatch – October 21, 2022

Page 124

1 and similar categories.

2 Q Although this real life purchaser
3 may not have other knowledge of the prior
4 arts and the products in the industry,
5 it's -- and that was the question -- even
6 though you think -- even though you know this
7 purchaser in real life may not have all the
8 knowledge about the prior arts and the
9 products in the industry?

10 MR. BERKOWITZ: Objection to the
11 form.

12 A Yeah, my understanding is that the
13 consumer in real life would not have
14 knowledge of all of the prior art or all of
15 the competing hoverboards, that is correct.

16 Only the hypothetical ordinary
17 observer is considered to have knowledge of
18 the prior art.

19 Q And you think this purchaser in
20 real life, as defined in your report, fits
21 better in the situation?

22 A Fits better than?

23 Q Than the hypothetical ordinary
24 observer in this case.

25 A That's not what I said.

Paul Hatch - October 21, 2022

Page 125

1 We look at the purchaser in real
2 life to understand the level of acuity
3 they -- the level of attention that they pay
4 to viewing the product, but the hypothetical
5 ordinary observer is actually the operational
6 construct, if you will, that we use for the
7 analysis.

8 But we apply the level of attention
9 from the -- the purchaser to the hypothetical
10 ordinary observer. So it's not one or the
11 other. One helps define the other.

12 Q Which define the other?

13 I'm a bit confused here.

14 So are you saying you're using two
15 standards or you're using one standard here?

16 A The standard for the hypothetical
17 ordinary observer is that we apply the level
18 of acuteness of the purchaser.

19 And so when I say one helps inform
20 the other, it's knowing the level of
21 acuteness of the purchaser. The real life
22 purchaser helps us inform the level of
23 acuteness that an ordinary observer would
24 pay.

25 Q The hypothetical ordinary observer

Paul Hatch – October 21, 2022

Page 126

1 would pay?

2 A Yes, yes.

3 Q And so, you agree in this case, a
4 hypothetical ordinary observer will have
5 knowledge of all the prior art?

6 MR. BERKOWITZ: Objection to the
7 form.

8 A Yes, unlike the purchaser in real
9 life, they have knowledge of the relevant
10 prior art.

11 Q But however, in this case, you're
12 saying, it is my opinion that an ordinary
13 observer in this case is the typical
14 purchaser of hoverboards.

15 So should this case use the
16 standard of a hypothetical ordinary observer
17 or use the standard that you define here as
18 the typical purchaser of hoverboards in your
19 own words about purchasing in real life?

20 A It's kind of the same thing. You
21 may be misunderstanding this, but when we
22 define -- in these cases, when we define who
23 the ordinary observer is, it's a hypothetical
24 person, it's based upon this real life
25 purchaser.

Paul Hatch - October 21, 2022

Page 127

1 And that's why it's phrased in that
2 way, that the ordinary observer in this case
3 is the typical purchaser of hoverboards.
4 That's the typical phraseology but it doesn't
5 mean that these are competing aspects.

6 Q So you agree a hypothetical
7 ordinary observer has knowledge of all the
8 prior arts, however, here, you define this
9 ordinary observer in this case as a typical
10 purchaser who has limited knowledge of all
11 the prior arts and the products in the
12 industry, how do you reconcile the gap
13 here?

14 MR. BERKOWITZ: Objection to the
15 form.

16 A I think you're twisting things a
17 little here, but as I said before, it's the
18 level of attention that we actually use from
19 the purchaser in real life to help us inform
20 the ordinary observer.

21 It's normal to phrase it this way,
22 that that purchaser is the ordinary observer.

23 But this hypothetical impression of
24 the ordinary observer that we use is not the
25 purchaser from real life, but one who has

Paul Hatch – October 21, 2022

Page 128

1 that level of attention but is informed by
2 the prior art. And that's the hypothetical
3 version of the ordinary observer.

4 Q So what you just stated, is that
5 included in your report?

6 MR. BERKOWITZ: Objection to the
7 form.

8 A I do describe, for instance,
9 further up, the definition of the ordinary
10 observer, you know, in the previous
11 paragraphs, and how it's -- how it's
12 applicable when doing infringement analysis.
13 I believe it's clear.

14 I believe it is in the report, to
15 answer your question, that we are defining
16 who we think this ordinary observer
17 represents, and we use this ordinary observer
18 later in the document as a viewpoint.

19 So I think that's a yes to your
20 question.

21 Q So I'm reading the section that you
22 tried to define the ordinary observer.

23 At the end of the paragraph you
24 mention the ordinary observer is also the one
25 who's aware of the number of closely similar

Paul Hatch - October 21, 2022

Page 129

1 prior art designs and conversant with the
2 prior art.

3 Just to be clear, do you think the
4 hypothetical ordinary observer should know
5 all the prior arts or just to the number of
6 closely similarly prior art designs?

7 MR. BERKOWITZ: Objection to the
8 form.

9 A My understanding is that they
10 have -- I can't define exactly where the line
11 is there, but my understanding is they have
12 knowledge of the relevant prior art, and
13 certainly relevant in this case would be
14 prior art that's cited on -- on the -- by the
15 patents themselves.

16 I believe it's often debated as to
17 exactly what falls under relevant and that's
18 not something for me to argue, but what is
19 very clear, though, is that everything on the
20 patents is certainly relevant to this case.

21 Q And now, let's go back to the parts
22 that you mentioned. Go back to the Exhibit
23 No. 5 where you compared the products,
24 accused products, the patents-in-suit and the
25 prior art.

Paul Hatch - October 21, 2022

Page 130

1 We were trying to highlight the
2 differences between product B and the D '723
3 patent.

4 And can you go through the
5 differences with us?

6 A Yes.

7 So if we look at just for this
8 conversation, obviously, the analysis is done
9 looking at all the views at the same time.

10 But if we look at page 4 of the
11 exhibit, five that you mentioned, you know,
12 where we see an angle view of both?

13 Q Umm-hmm.

14 A To define the differences and the
15 reason we went around this way is, as I said,
16 we need to be looking through the eyes of the
17 ordinary observer, and so the ordinary
18 observer at this time, if they -- if they
19 have knowledge of the '906, then that helps
20 inform them what they -- what becomes
21 prevalent to them about the impression that
22 they get, right, the ornamental design.

23 Q Umm-hmm.

24 A And that helps them understand,
25 okay, well, what's similar and what's

Paul Hatch - October 21, 2022

Page 131

1 different, okay?

2 Q What's different, yeah. Okay.

3 A Okay. So we see lots of
4 similarities, particularly with the '906 in
5 mind. We do see some smaller details, when
6 we zoom in a little bit.

7 For instance, the '906 has a fender
8 skirt, like a sort of closed area around the
9 wheels. Whereas, in the '723 and product B,
10 we see that they both have an open fender.

11 But there are differences in the
12 way that they have that open fender that are
13 both different and quite far away from the
14 '906, but there are differences in the way
15 that they have that.

16 Product B, for instance, has a
17 little less material in the way that it's an
18 open fender.

19 The '723 has a little bit more
20 material as it wraps around, but it's still
21 above the wheel. So it's still open and
22 giving visibility to the wheel. So there's a
23 difference when we drill down into a smaller
24 level there.

25 Again, with the context of the

Paul Hatch - October 21, 2022

Page 132

1 '906, one of the biggest differences they
2 both have, from the '906, is that they have
3 these pronounced areas of the foot tread
4 areas and they have different approaches.
5 They both have foot -- pronounced foot
6 treads, but they have differences in the way
7 that they address that.

8 Product B has angled lines in
9 different sort of angled lines that the '723
10 has in the way that it pronounces those
11 things, but they're very similar because the
12 '906 doesn't even have any pronounced at all.

13 So again, there are differences at
14 a much lower level of -- of detail. These
15 differences, you know, do contribute to the
16 overall impression.

17 Staring at the two things, an
18 ordinary observer will notice differences,
19 but of course, this test is not about whether
20 we know just differences. It's about whether
21 we believe the product B, the D '723, are
22 closer to each other than the '906, you know,
23 with view of the '906, and they are.

24 Sorry for the long answer, but you
25 wanted a list of differences.

Paul Hatch - October 21, 2022

Page 133

1 Q That's perfect.

2 I mean, I want you to show me the
3 differences or highlight the differences, and
4 I do thank you, almost got it right, except
5 from -- you know, when you compare A to B,
6 you notice the differences, anyone does,
7 where A is different from B, you certainly
8 know the differences.

9 And I think the prior art comes
10 into play that will enhance the differences
11 between A and B.

12 Do you agree? I mean --

13 A No, I think --

14 MR. BERKOWITZ: Objection to the
15 form.

16 A -- in this particular case, the
17 '906 does inform us, help understand what are
18 the differences. The '906 says, okay, this
19 is the world that happened before the
20 invention of the '723.

21 You are saying that this is the
22 closest prior art.

23 So if '906 happens and some time
24 after that the '723 happens, then -- then
25 yes, I understand what got invented at the

Paul Hatch - October 21, 2022

Page 134

1 time of the '723.

2 And then, of course, I ask myself,
3 well, if product A now comes along, is that a
4 huge step from '723 or not considering the
5 big step that -- the big differences between
6 '906 and the '723.

7 And it's really quite clear, you
8 know, and that's the analysis that's going on
9 here.

10 I cannot see how someone can think
11 that the melted form of the '906 can
12 somehow -- somehow come between the '723 and
13 product A or product B.

14 Q Product A and product B, what do
15 you mean by product A and product B?

16 A I'm referring to the accused
17 products, Gyroor product A and Gyroor product
18 B.

19 Q But you're not comparing product A
20 to product B?

21 A No. I was comparing them to the D
22 '723 and comparing them to the '906 and
23 seeing the substantial gap. I guess, between
24 the '723 and the '906, but that sort of size
25 gap, those huge differences are much bigger

Paul Hatch – October 21, 2022

Page 135

1 than the gap that '723 has to product A.

2 Q Well, let's just focus on one
3 product, and let's use product B as an
4 example.

5 A Sure.

6 I could repeat the same for that.
7 You brought up product A, so I was just
8 answering that question.

9 Q I didn't, but I think you first
10 mentioned product A, but let's use product B
11 as an example here.

12 A Sure.

13 Q First, I would like to ask you
14 about the -- let's take a look at page 1. I
15 think that is the top view of the products,
16 accused products of the patents-in-suit, D
17 '723 and the prior art D '906.

18 A Yes, I'm looking.

19 Q Let me share my screen with
20 everyone so when I refer to certain aspects
21 you understand what I'm saying here.

22 Can you see my screen?

23 A Not yet.

24 Oh, yes, I can.

25 Q And can you see the little mouse

Paul Hatch - October 21, 2022

Page 136

1 I'm using?

2 A Yes.

3 Q Okay. So this is product -- this
4 is the D '723 patent. This is product B and
5 this is the '906 patent?

6 A Yes, from one particular view.

7 Q From the top view, you're correct.

8 Let's see. This product A --
9 sorry, this top view of D '723 patent have an
10 hourglass shape.

11 Do you agree?

12 A Yes, it -- you know, yes, it does
13 have a generally hourglass shape.

14 Q And do you think it's a similar
15 shape as the D '906 patent?

16 A The '906 in this view has an
17 hourglass shape as well and there are
18 similarities in its hourglass shape.

19 Q And do you see that the connecting
20 portion for product B, which I'm pointing
21 here, has a more straight or edging curve
22 than both of them?

23 Let me enlarge it a little bit.

24 A You may need to zoom in. I know
25 the area you're talking about, straight or

Paul Hatch - October 21, 2022

Page 137

1 edgy?

2 Q Umm-hmm.

3 A Can you define what you mean by
4 straight or edgy?

5 I see there is a straight part in
6 the area.

7 Q In the middle, exactly.

8 A On all three, right, the '906 and
9 Figure 1, too?

10 Q I would say '906 is more smooth.
11 There's no clear --

12 A Are you talking about the straight
13 you're alluding to?

14 You used the word "straight." So
15 there's a straight portion in the middle,
16 which I see when we move this.

17 Q For product B?

18 A The '906, right.

19 Q And can you see that the cover
20 covers, you know, less than half of the
21 wheels here on both sides?

22 A On the top view of the --

23 Q For product B.

24 A Yeah, you're talking about the
25 fender, right?

Paul Hatch - October 21, 2022

Page 138

1 Q I'm talking about the fender or the
2 wheel cover, if that's easier.

3 And can you see -- you cannot say
4 the same for D '723 patent.

5 Is that correct?

6 MR. BERKOWITZ: Objection to the
7 form.

8 A We see in this particular view, in
9 Figure 1, we only see some of the wheel, and
10 in product B we see a little bit more of the
11 wheel.

12 So there's a difference which I
13 described earlier. They both have open
14 fenders but there's a little less material on
15 product B.

16 Q I would say a lot less material.
17 Do you agree?

18 MR. BERKOWITZ: Objection to the
19 form.

20 A In the light of the '906, which
21 almost completely covers the wheel --

22 Q Not from the top view. You can't
23 tell that. I mean, the top view is similar.

24 MR. BERKOWITZ: Objection to the
25 form.

Paul Hatch - October 21, 2022

Page 139

1 A Yeah, sure.

2 In the top view, we only see some
3 of the wheel, but we see it only partially
4 covers the wheel, however, the analysis is
5 not done in singular views.

6 Q Well, we're going to -- we're going
7 through them one by one. So right now, we're
8 just looking at the top view. As you
9 mentioned before, the design for the standing
10 pads are different.

11 Can you see that there are a lot of
12 different angles and shapes for the product
13 B?

14 A To the '906?

15 Q To the '906 and to the D '723
16 patent. You can't possibly argue that they
17 are similar design.

18 MR. BERKOWITZ: Objection to form.

19 A Yes, the -- you know, the '906 has
20 no pronounced pads. And on B, we do see
21 pronounced pads and it is different. It has
22 differences to the '723 pronounced pads in
23 that it has what you call angular forms.

24 Yes, absolutely. When we zoom in
25 like this, we can identify the differences,

Paul Hatch - October 21, 2022

Page 140

1 yes.

2 Q Okay. Are they different in
3 shapes?

4 A What shapes? Like the -- you're
5 talking about the pronounced --

6 Q I'm looking at that here.

7 A Yes.

8 Q So we were talking about the
9 appearance.

10 What is the appearance of the pads
11 here?

12 A They're generally flat shape with a
13 pronounced area that we're calling footpads,
14 which is what we see on product B and not on
15 the '906.

16 So there are differences. You
17 know, to your point, there are definitely
18 differences, particularly when we look at the
19 inner lines, you know, the inner details of
20 those printouts for footpads.

21 Q And --

22 A And the prior art -- I'm sorry,
23 Robin. I was delayed with my continuation.

24 You know, the point being that the
25 '906 doesn't even have -- it's not even in

Paul Hatch - October 21, 2022

Page 141

1 the ballpark. It's not at the table of
2 pronounced footpads.

3 So the details in between those,
4 it's only making the '906, you know, run out
5 the door. It's highlighting the bigger
6 differences that these have to the '906.

7 Q But we're talking about the
8 ornamental aspect.

9 A Umm-hmm.

10 Q So when you're talking about
11 ornamental, it's not -- you know, you have to
12 be specific.

13 Are these --

14 A Yes.

15 Q There are lines, shapes, shades,
16 curves.

17 So what part of the appearance
18 you're referring to?

19 MR. BERKOWITZ: Objection to form.

20 A I'm referring to the impression of
21 the product as a whole, and here we were
22 talking about the pronounced footpads and the
23 ornamental way that they are described as --
24 you know, as being pronounced on the design.

25 So you're correct, you know, we are

Paul Hatch - October 21, 2022

Page 142

1 talking about the ornamental. I certainly
2 wasn't talking about the function.

3 Q Well, I think -- it sounds like
4 you're talking about function.

5 You're saying it's here, it's not
6 here. It's more the concept rather than the
7 appearance.

8 So are you talking about the
9 concept of having lines, having shapes or are
10 you talking about the actual ornamental
11 features such as the shape, the curve?

12 A I don't understand what you're
13 saying.

14 I'm talking about the impression
15 that the visual gives us, which is, of
16 course, about the ornamental impression
17 rather than the concept.

18 Q And --

19 A Go ahead.

20 Q And now I'm moving to page number 2
21 of the report.

22 And as we were discussing the '723
23 patent and the product B and the '906 patent,
24 and can you tell that in the middle of the
25 hoverboard, the '906 patent is more raised

Paul Hatch - October 21, 2022

Page 143

1 slightly in the middle of the hoverboard, as
2 I'm pointing back with my mouse here?

3 A Yes.

4 Can you zoom in a little just to be
5 sure?

6 Q Yes.

7 So as the mousing is pointing, can
8 you see this part that's slightly raised in
9 the middle?

10 A Yes, that's right.

11 I do see that the top surface of
12 that hoverboard, the '906, is generally flat,
13 but it does raise a little in the middle that
14 you were pointing out, yes.

15 Q And the '723 also has the slightly
16 raised in the middle portion?

17 A It looks like it might be the same
18 sort of level as the footpads on the left and
19 right, but, you know, it's generally pretty
20 flat there.

21 Q Yeah, I think maybe because the --
22 I think because --

23 A I don't know if you want to look at
24 that level of detail.

25 Q But no, it mentions a poor quality,

Paul Hatch - October 21, 2022

Page 144

1 I think, in your report. Let me see if I can
2 pull the actual patent out.

3 MR. CHENG: We'll mark this as
4 Exhibit No. 7.

5 (Above-mentioned document marked
6 for Identification.)

7 Q Mr. Hatch, can you open that
8 document?

9 A Yes.

10 Do you want me to screen share
11 or --

12 Q No, I will do the screen share.

13 A Okay.

14 Q Can you see my screen?

15 A Yes.

16 Q And can you see that's Figure 3 of
17 the '723 patent?

18 A Yes, that's correct.

19 Q And can you see that the middle of
20 this '723 patent is raised slightly in the
21 middle?

22 MR. BERKOWITZ: Objection to the
23 form.

24 A It ends up being about the same
25 height as the footpads on the sides.

Paul Hatch - October 21, 2022

Page 145

1 Q So you disagree with me?

2 A I think we see it -- if you
3 actually draw a line there between the
4 footpads, you'll see it's the same height,
5 but not this level of scrutiny.

6 Not only is it correct, but we
7 shouldn't be analyzing one particular view
8 for something that is a matter of millimeters
9 between the footpads, the distance between
10 the footpads, you'll see it's the same
11 height.

12 Q Of course, it's easier just to
13 attribute everything to the overall
14 impression, but to understand how this
15 overall impression formed, we have to go
16 through some of the details.

17 Let's also take a look at the
18 thickness of the wheels.

19 Do you agree that the wheels of
20 product B are significantly thicker than in
21 the D '723 patent?

22 A So comparing the wheels, my
23 understanding is that the wheels are
24 unclaimed and so in this analysis, we're not
25 comparing the thickness of wheels.

Paul Hatch - October 21, 2022

Page 146

1 If you zoom in, you'll see that
2 there's a lot of breaking lines there. That
3 being said, of course, you know, they --
4 they're pretty thick wheels especially when
5 compared to the '906.

6 Q Oh, I'm looking at the Exhibit 7.

7 I think that broken thing is just
8 the design of the wheel.

9 So you're saying the wheels are not
10 claimed in the D '723 patent?

11 A I believe your experts alluded to
12 that as well, but we see that there are
13 broken lines there, if you want to look. The
14 patent is there, but there's lots and lots of
15 broken lines.

16 Q I'm enlarging the picture here.

17 Are you referring to the cover of
18 the wheels -- not the cover, but how do you
19 say that, the most outside portion of the
20 wheels with the dotted line or are you
21 talking about the entire wheel in broken
22 line?

23 A Specifically, the wheel tread,
24 which I think is what you're referring to.

25 The hub is certainly also

Paul Hatch - October 21, 2022

Page 147

1 unclaimed, but you can see the tread is also
2 made up of broken lines, the view you have on
3 the screen right now.

4 Q I see.

5 So you're saying the entire tire or
6 the wheel does not form part of the claimed
7 design?

8 MR. BERKOWITZ: Objection to the
9 form.

10 A In the '723, it's shown as
11 unclaimed.

12 Q As unclaimed?

13 A Yeah.

14 Q Okay.

15 A However, the '906 has very skinny
16 wheels.

17 Q It's also unclaimed, I think.

18 A And what we see in the '723 and all
19 the other products here, product A through E,
20 are thick tires, not skinny, like on the
21 '906.

22 However, it is unclaimed anyway, so
23 that's not necessarily a moot argument.

24 Q Can you tell from the side view the
25 fender are pointing up, which is

Paul Hatch - October 21, 2022

Page 148

1 significantly different from the fender or
2 the wheel cover that was in the D '723
3 patent?

4 A Yeah, not only in this view, but in
5 other views you do see differences between
6 the open fenders, certainly and, you're
7 correct. On B, it looks like they go up.
8 And on the '723, the fender, in the same
9 area, the same type of fender also goes up.

10 The difference being on B that it
11 doesn't return back down again, so it's the
12 last bit of the fender that reveals a bit
13 more wheel.

14 Do you see that?

15 Q Yes. I think the angle was also
16 different.

17 A My understanding is that the style
18 of that curve is very, very similar, but of
19 course, on B it cuts off.

20 Again, we're looking at the nuance
21 differences when the '906 there has a closed
22 fender. There's this fender skirt that goes
23 way down.

24 Q Well, from the front view, which is
25 what we're looking at, that looks more

Paul Hatch - October 21, 2022

Page 149

1 similar than the fender in product B that
2 goes up with a different angle.

3 A If it were a correct analysis to
4 identify differences in singular views only,
5 I think you're correct, however the analysis
6 that was done is the design as a whole, and
7 we know that the '906 has a substantially
8 different looking fender, you know.

9 Q I mean, we are identifying them as
10 a whole, but you can't take the whole thing.
11 I mean, one thing from my meditation
12 practice, I -- again, at one point you can
13 only focus on one aspect of a matter. So
14 that's why we're going through them page by
15 page to get a better understanding of that.

16 Now I'm moving to the third page,
17 which shows the bottom view of the item. And
18 again, if I enlarge it, I don't know if
19 it's -- the quality of the picture is good,
20 can you see that there are -- well, first, I
21 think compared with the D '723 patent and the
22 D '906 patent, they both have hourglass shape
23 from the bottom view.

24 Do you agree?

25 A Yes, all items on this page have a

Paul Hatch – October 21, 2022

Page 150

1 general hourglass shape, yes.

2 Q Which is first disclosed in the D
3 '906 patent?

4 MR. BERKOWITZ: Objection to form.

5 A The '906 did disclose an hourglass
6 shape, yes, as part of it in its overall
7 appearance.

8 Q From the bottom view, can you tell
9 me the difference between the D '723 patent
10 and the D '906 patent?

11 A Well, obviously, the analysis is
12 done on the product as a whole because just
13 looking at isolated views may be misleading.

14 However, to answer your question,
15 when we're comparing these images, yes, we
16 see, you know, there's a different -- you
17 know, in this particular view, we are seeing
18 the hourglass shape and there are a lot of
19 similarities between product B, the '723 and
20 the '906.

21 The wheels, as we know, are
22 unclaimed. They all share a fair number
23 of -- of parts of this, this overall
24 impression in this particular view.

25 Q So the overall impression of the

Paul Hatch - October 21, 2022

Page 151

1 bottom view is quite similar, all three of --
2 all three of them, the patents-in-suit, the
3 accused product B and the '906 patent?

4 MR. BERKOWITZ: Objection to the
5 form.

6 A In this particular view, they are
7 fairly close, yes.

8 Q And I guess page number 4 we had
9 looked at already. This is also a very --

10 A I'm not sure why those are so
11 pixilated, but we're familiar with the
12 originals at least.

13 Do you not want to look at the side
14 views?

15 Q I'm trying to see if I can get a
16 clear view of the side view.

17 Let me take a look at the other
18 pattern, which may have a better view. It's
19 right here.

20 So as shown here -- that is figure
21 5 of the D '723 patent, which shows a side
22 view of the claimed design.

23 Can you see that?

24 A Yes.

25 Q And where the fender covers

Paul Hatch - October 21, 2022

Page 152

1 significantly, especially the top --
2 especially the top of the wheel.

3 Do you agree?

4 A Yes.

5 The open fender here sits on top of
6 the wheel. The wheel is unclaimed but we
7 know it's there and reveals the hub on the
8 side of the wheel.

9 Q And if we take a look at the
10 product B, as you can see, none of the wheel
11 is covered by the fender and the side view
12 clearly showed that the whole fender does not
13 cover the wheel from the side view.

14 MR. BERKOWITZ: Objection to the
15 form.

16 A That's not how -- you made a
17 statement.

18 Is that a question?

19 Q It's a question.

20 A The fender here is also above the
21 wheel and it does reveal the side of the
22 wheel.

23 In this case, we see a lot more of
24 the tread of the wheel, but of course,
25 that's, you know, unclaimed in the patent

Paul Hatch - October 21, 2022

Page 153

1 we're looking at.

2 Q Okay.

3 A And in the '906, we only can see
4 the hub or anything. So it's an entirely
5 closed one, and so, you know, when we say
6 which one is closer to each other, it's very
7 clear that this fender on top of the wheel is
8 revealing most of the wheel is common between
9 the '723 and product B, and the '906 has a
10 completely different direction.

11 Q How did you determine what is
12 closed or what is further?

13 A Based on what we're seeing here,
14 for instance, that the -- that we have a --
15 what's called a fender skirt, you know, like
16 a closed wheel, picture those cars from the
17 '50s and '60s, they used to have that, a
18 fender skirt, a cover over its wheels. I'm
19 not sure why.

20 And today, we have the approach
21 that's product B in '723, why there's a
22 fender on cars that reveals the wheel and
23 people like to show off their hubs and do
24 fancy designs.

25 Product B does a good job of that

Paul Hatch - October 21, 2022

Page 154

1 as well, so I feel, in closing the wheel,
2 like '906 does and closing the hub entirely.

3 Q Not entirely -- sorry, I'll let you
4 finish.

5 A Correct. Not entirely.

6 We do see probably the bottom of
7 the tread, but the way it's enclosed there
8 gives it a whole different feel.

9 So to answer your question, you
10 know, what makes that so different, you know,
11 why is that further away, it's because it's
12 giving it quite a different impression.

13 Q Let me --

14 A Because with a car with a fender
15 skirt, it would certainly catch my eye.

16 Q I understand that.

17 Well, you mentioned the word
18 "feel."

19 You could easily argue that an
20 ordinary observer can have the feel that
21 product B has a more edgy, more futuristic
22 design, so the fender goes up, and the -- on
23 the '906 patent, and the '723 patent has some
24 more traditional covering of the wheel
25 design.

Paul Hatch - October 21, 2022

Page 155

1 How do you define the feel that an
2 ordinary observer feels?

3 A I guess the feel is -- you know,
4 look and feel as being the way we perceive
5 the object, so we look at it and we get a
6 certain sense of it. And we, in doing so, we
7 think about prior references we had to
8 objects like that.

9 And I guess I was bringing up cars.

10 I mean, it doesn't mean you have to
11 be car experts, but certainly if I saw a car
12 with covered wheels, that would stand out to
13 me.

14 Whereas, the difference between
15 '723 and product B, if I saw those on cars,
16 that would not stand out to me, so I would
17 not have a different feel, whereas I would to
18 the '906.

19 Q So by "feel," you're referring to
20 the emotional perception that the ordinary
21 observer received from seeing the products
22 and then seeing the patent?

23 A Yeah. "Impression" is probably a
24 better word, but we -- I was using the terms
25 look and feel to describe, you know, that

Paul Hatch - October 21, 2022

Page 156

1 we're observing the design, not necessarily
2 say an emotional attachment to the product.
3 It's about the ornamental styling.

4 Q Is that from your own perspective
5 or from the perspective of the ordinary
6 observer that you defined in your report?

7 A It's from the perspective of the
8 ordinary observer.

9 Q And by feel, you're referring to
10 the -- to your own word, the ornamental
11 styling?

12 A Yes. You're asking about that, and
13 look and feel is a phrase, by itself, that's
14 used to refer to styling as opposed to, say,
15 functionality.

16 So I was using that to -- to help
17 describe what we're looking at here, but
18 obviously in my report, I use the word
19 "impression," which is the -- the official
20 term that we're using here.

21 Q Is that objectively or subjectively
22 when you're referring to the impression?

23 A I'm doing so to represent what the
24 ordinary observer would be looking at. So I
25 think I'm being objective in this case.

Paul Hatch – October 21, 2022

Page 157

1 Q Okay.

2 MR. CHENG: We're almost finished.

3 Let me just -- let's just do -- I
4 think I can wrap up everything within 30
5 minutes. I just have a few more questions
6 related to product E that was included here.

7 MR. BERKOWITZ: Why don't we take
8 five or ten minutes because we've been going
9 now about an hour and 15.

10 MR. CHENG: Sure, yeah. Let's take
11 five or ten. I have no preference.

12 (Brief recess taken.)

13 Q Mr. Hatch, just a few more
14 questions regarding the product E included in
15 your expert witness report.

16 First, why did you include
17 Exhibit -- why did you include product E, the
18 Gyroor product E in your report?

19 MR. BERKOWITZ: Objection to the
20 form.

21 A Well, I believe it -- it also
22 infringes on the patent.

23 Q How did you know that ink
24 fringed -- how did you know about this
25 product?

Paul Hatch - October 21, 2022

Page 158

1 A The -- the attorneys informed me
2 about product E and asked me to analyze it.

3 Q When did they inform you about
4 product E?

5 A I'm not sure. Obviously, some time
6 before I wrote the document up.

7 Let me pull up the exhibit here.

8 Yeah, I'm not sure exactly of the
9 timing because product E was a later analysis
10 that I did and I got ahold of the product
11 itself, the sample, and looked at it and then
12 added it to my infringement report.

13 Q Was product E -- was product E
14 included -- I'll ask was the analysis of
15 product E included in your prior reports?

16 A I -- I'm just trying to recall.

17 I think -- let me see.

18 You sent in Exhibit 1, is it -- I
19 think it might have been in the 2021, if I
20 can check.

21 Q Oh, take your time. You can check
22 it.

23 A Okay, thank you.

24 I don't want to misstate that,
25 because I know it came later.

Paul Hatch - October 21, 2022

Page 159

1 Q Of course.

2 A I'm just not sure of the timing.

3 Yes. So I think it was -- I think
4 it came -- I included it for the first time
5 in my first infringement report of 2022.

6 Q Can you tell me the date for the
7 2022 report?

8 A I believe that's Exhibit 3, and
9 what date, I think the date is -- it's
10 August, possibly August the 15th I think it
11 was filed.

12 Q And is there any reason that was
13 not included in your prior reports?

14 MR. BERKOWITZ: Objection to the
15 form.

16 A I was not aware of it in prior
17 reports that it wasn't included in. So as
18 soon as my attention was brought towards it,
19 I analyzed it and included it in my
20 infringement report.

21 Q And I'm looking at the Exhibit No.
22 6, which is dated August 24, 2021.

23 Can you take a look at that,
24 Exhibit No. 6?

25 A Yes.

Paul Hatch – October 21, 2022

Page 160

1 Q Can you confirm that product E is
2 not included in this report?

3 MR. BERKOWITZ: Objection to the
4 form.

5 A It -- it's -- there are no images
6 of Gyroor product E included in Exhibit 6.

7 Q Did you know about product E when
8 you submitted this report?

9 MR. BERKOWITZ: Objection to form.
10 Asked and answered.

11 A I don't think I was aware of it as
12 a -- as a separate product of Gyroor's at
13 that time.

14 Q Okay.

15 MR. CHENG: I have no further
16 questions.

17 Thank you.

18 MR. BERKOWITZ: Okay. I have no
19 questions for the witness.

20 MR. CHENG: Great.

21 And thank you, Mr. Hatch, so much
22 for attending the deposition today. I know
23 it took a while.

24 And I thank you, Ms. Reporter, for
25 helping us with this process.

Paul Hatch – October 21, 2022

Page 161

1 (Whereupon, the deposition was

2 concluded at 3:10 p.m.)

3 (Witness was excused.)

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Paul Hatch – October 21, 2022

Page 162

1 C E R T I F I C A T E

2 I, CHARLENE FRIEDMAN, a Certified Court
3 Reporter and Notary Public, qualified in and for
4 the State of New Jersey do hereby certify that
5 prior to the commencement of the examination PAUL
6 HATCH was duly sworn by me to testify to the truth
7 the whole truth and nothing but the truth.

8 I DO FURTHER CERTIFY that the foregoing
9 is a true and accurate transcript of the testimony
10 as taken stenographically by and before me at the
11 time, place and on the date hereinbefore set forth.

12 I DO FURTHER certify that I am neither a
13 relative of nor employee nor attorney nor counsel
14 for any of the parties to this action, and that I
15 am neither a relative nor employee of such attorney
16 or counsel, and that I am not financially
17 interested in the action.

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Paul Hatch - October 21, 2022

Page 163

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Paul Hatch – October 21, 2022

Page 164

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DEPOSITION ERRATA SHEET

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the _____ day of
_____, 20____

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Paul Hatch - October 21, 2022

Page 165

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Paul Hatch - October 21, 2022

Page 166

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